

# **The State of Texas Procurement Manual**

**Texas Comptroller of Public Accounts  
Susan Combs, Comptroller**

**Texas Procurement and Support Services Division**

**<http://www.window.state.tx.us/procurement/>**

2012

## **Texas Procurement and Support Services (TPASS)**

### **A Division of the**

## **Texas Comptroller of Public Accounts**

### **General Information**

For information on the TPASS procurement responsibilities, click or visit the TPASS State Purchasing Web site, <http://www.window.state.tx.us/procurement>. This Web site explains the services provided to state agencies as well as political subdivisions, such as city and county governments, school districts, junior colleges, etc., including central procurement for the state, travel management, vehicle fleet management, and more.

Any contracts originated through or managed by the TPASS's TPASS Division will hereafter be referred to as TPASS contracts. All TPASS contracts are posted to the TPASS Web page at <http://www.TPASS.state.tx.us/procurement/contracts/>

### **Centralized Master Bidders List**

The Web site also provides information on the Centralized Master Bidders List (CMBL), an online directory of businesses registered with the state of Texas. State agencies, colleges, universities and local governments use the CMBL to find sellers for products and services. Unless exempted by law, the CMBL **must** be used for all procurements subject to TPASS's procurement authority.

### **Historically Underutilized Businesses**

The Texas Comptroller of Public Accounts encourages Historically Underutilized Businesses (HUBs) to bid on contracts and is always eager to assist those businesses with the solicitation response process. HUBs can be found through the CMBL and HUB search portal.

**Electronic State Business Daily** State agencies are required to post notices for all solicitations expected to exceed \$25,000 or more on the Electronic State Business Daily (ESBD).

### **Texas Register**

Requests for consulting services may also be advertised in the *Texas Register*. State agencies generally coordinate posting on the Texas Register through their General Counsel's office. The Secretary of State's Web site at <http://www.sos.state.tx.us/texreg/index.shtml> contains information about requests for professional services, consultant services, rules, open meetings, and business of the state.

### **TPASS Web site**

If you have an idea on how we can better serve your needs with the TPASS Web site, please contact us by e-mail at [procurement\\_info@cpa.state.tx.us](mailto:procurement_info@cpa.state.tx.us).

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## **Section One**

### **Procurement Authority**





## Section 1.0

### Overview

The State of Texas Procurement Manual (“Procurement Manual”) is, along with Texas Statutes, Government Code and Texas Administrative Code (TAC) rules, the primary reference for certified Texas purchasing staff. This manual provides standard procedures for implementing the requirements of Texas statutes and delegated purchasing authority to ensure the application of consistent and sound business practices in the acquisition of goods and services and disposition of state owned property in Texas government. It demonstrates the ongoing commitment of the Texas Comptroller of Public Accounts to standardize state procurement practices and procedures by:

- Simplifying and clarifying the law governing procurement by the State of Texas.
- Providing for the continued development of centralized procurement policies and practices.
- Ensuring consistency in procurement practices among state agencies.
- Providing for increased public confidence in the procurement procedures followed by Texas governmental entities.
- Ensuring the fair and equitable treatment of everyone who deals with Texas procurement processes and systems.
- Providing increased economy in state procurement activities; maximizing the purchasing value of public funds; obtaining in a cost-effective and responsive manner the commodities and services required by state agencies in order for those agencies to better serve Texas’s taxpayers.
- Fostering effective public competition.
- Safeguarding quality and integrity in Texas public procurement.

State of Texas employees involved in the procurement of goods and services have a responsibility to uphold Texas procurement laws and act in good faith to serve the best interests of the State of Texas and its taxpayers. This responsibility requires a thorough knowledge of the following:

- Texas Government Code, Title 10, Subtitle D. Click or visit <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2155.htm#2155.001>;
- Texas Administrative Code (TAC). Click or visit [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac)

### Scope

The Procurement Manual contains purchasing authority requirements, procedures, and best practices applicable to the procurement of goods and services. Content is organized into the following sections to help answer topical questions and guide a purchaser through related procedures.

Section	Topic	Answers these common questions:
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<b>1</b>	<b>Purchasing Responsibilities and Authority</b>	<ul style="list-style-type: none"> <li>• What is required of a State of Texas purchaser?</li> <li>• For which types of goods or services is a purchaser responsible for creating a solicitation (delegated purchasing authority)?</li> </ul>
<b>2</b>	<b>Purchases without Competitive Bidding</b>	What goods or services are available from existing contracts?
<b>3</b>	<b>Solicitation Process</b>	What are the best practices for creating a solicitation, evaluating bids, and making an award?
<b>4</b>	<b>Contract Administration</b>	<ul style="list-style-type: none"> <li>• What are the best practices for making changes to a contract and paying vendors?</li> <li>• How do purchasers report vendor performance?</li> </ul>
<b>5</b>	<b>Procurement Review</b>	How should procurement files be documented?
<b>6</b>	<b>Training &amp; Certification</b>	What is the process for obtaining and renewing State of Texas purchaser certification?
<b>7</b>	<b>Other Procedures and Resources</b>	What other purchasing procedures and reporting are there?

### **Comments**

Please send comments regarding the Procurement Manual to [procurement\\_info@cpa.state.tx.us](mailto:procurement_info@cpa.state.tx.us).

### **Purchases Contrary to Procurement Rules, Statutes, or the Procurement Manual**

Texas Administrative Code Title 34, Part 1, Chapter 20 – Click or visit [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=34&pt=1&ch=20](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=34&pt=1&ch=20)

Texas Statutes - Government Code(s) – Click or visit <http://www.statutes.legis.state.tx.us/>

Comptroller of Public Accounts – TPASS Division

Chapter 2155 – Purchasing: General Rules and Procedures

Chapter 2156 – Purchasing Methods

Chapter 2157 – Purchasing: Miscellaneous Provisions for Purchase of Certain Good and Services

Chapter 2158 – State Council on Competitive Government (CCG)

Chapter 2161 – Historically Underutilized Businesses

Chapter 2175 – Surplus and Salvage Property

### **Definition**

*State agency* refers to a department, commission, board, office or agency in the executive branch of state government created by the Texas Constitution or a Texas statute, the Texas Supreme

Court, courts of appeals, the Texas Judicial Council, or state universities. Texas Government Code §2151.002(2).

### **Statutory Purchasing Authority**

To support state operations and shorten the procurement cycle for purchasers, state law grants purchasing authority to TPASS, the Council on Competitive Government (CCG) and the Department of Information Resources (DIR) to establish contracts for commonly used goods and services for state agency and local government use.

Statewide contracts include DIR's Information and Communications Technology (ICT) Cooperative Contracts for IT goods and services and TPASS TxSmartBuy (term), Managed (Includes CCG) and TXMAS contracts for other goods and services.

For items not on an existing statewide contract, Texas Government Code §§ 2155-2161 and 34 Texas Administrative Code Chapter 20 provide additional detail on TPASS purchasing oversight and contract responsibilities as well as the purchasing authority delegated to state agencies.

The following charts portray delegated authority and specific government code references.

TPASS Non-Delegated  
Purchases



Services over \$100,000:  
*Request for Proposals (RFP) -- No upper dollar limit*  
Gov't. Code § 2156.121

State Agency Delegated Purchases and Procedures

- Delegated Purchases  
Gov't. Code § 2155.132
- *Commodity Purchases under \$25,000*
  - *Purchases of Services under \$100,000*
  - *Direct Publications*
  - *Internal Repair Purchases*
  - *Perishable Purchases*
  - *Fuel, Oil & Grease Purchases*
  - *Distributor Purchases*
  - *Emergency and Proprietary Purchases*
  - *IT Commodities and Services*

Public Utilities  
Gov't. Code § 2155.001

Interagency Agreement  
Contract (IAC)\*  
Gov't. Code Ch. 771

Specific Statutory Exemptions  
*see chart in audit section 4.5*

## Section 1.1

### Training and Certification

To help keep state purchasing and contract management personnel trained in accordance with state law, TPASS offers a variety of training and certification opportunities. The goal of the TPASS Training and Certification program is to exceed the statutory requirement by offering public purchasing courses and certification testing specifically designed for Texas procurement that includes three levels of purchaser training and two levels of purchaser certification and continuing education for certified individuals. In addition, contract management training is offered along with an optional certification and continuing education for certified individuals.

It is the responsibility of senior agency management to decide the most appropriate training track for agency employees. To facilitate this effort, senior procurement officials at all state agencies should assess the training and certification requirements of their employees and submit the results, as part of their annual procurement plan.

Information on training opportunities, continuing education and resources is available at <http://www.window.state.tx.us/procurement/prog/training-cert/>

### Requirements for Procurement Personnel

Pursuant to Gov't Code §2155.0178, the Texas Procurement and Support Services administers a system of training, continuing education and certification for state agency purchasing personnel.

Each state agency shall ensure that the agency's purchasing personnel complete the training and certification developed under this section. It is not the intent of this definition to include (1) an executive level manager authorized to bind the governmental entity or (2) an attorney performing traditional legal functions – such as legal review of a contract.

In addition to state agencies, employees of institution of higher education to which Section 51.9335, Education Code, applies or to an institution to which Section 73.115, Education Code, applies are encouraged to attend. Entities participating in TPASS's cooperative purchasing program of all offered TPASS contracts are especially encouraged to attend. Examples include school districts, police and fire departments, city and county governments and community colleges.

The following SAO classifications may be used as a reference to help identify individuals who are required to receive TPASS's purchaser training:

Class Number	Class Title	Salary Group	Occupational Category
1911	Inventory and Store Specialist I	A10	Property Management and Purchasing
1912	Inventory and Store Specialist II	A12	Property Management and Purchasing

1913	Inventory and Store Specialist III	A14	Property Management and Purchasing
1920	Grant Coordinator I	B18	Property Management and Purchasing
1921	Grant Coordinator II	B20	Property Management and Purchasing
1930	Purchaser I	B12	Property Management and Purchasing
1931	Purchaser II	B14	Property Management and Purchasing
1932	Purchaser III	B16	Property Management and Purchasing
1933	Purchaser IV	B18	Property Management and Purchasing
1934	Purchaser V	B20	Property Management and Purchasing
1935	Purchaser VI	B22	Property Management and Purchasing

### **Purchaser Training and Certification**

The 75<sup>th</sup> Legislature mandated that state purchasing personnel be trained and certified to the extent required by the Comptroller of Public Accounts (TPASS). In accordance with Texas Government Code §2155.078, TPASS administers a system of training, continuing education, and certification that includes three levels of training and two levels of certification.

### **Who Should Attend**

In accordance with Texas Government Code §2155.078, each state agency shall ensure that the agency's purchasing personnel complete the training and certification developed under this section.

In addition to state agencies, employees of political subdivisions and other governmental entities may attend. Examples include school districts, police and fire departments, city and county governments and community colleges. Entities participating in TPASS's cooperative purchasing program of all offered TPASS contracts are especially encouraged to attend.

For more information, please view the diagram found at TPASS's website at:

[http://www.window.state.tx.us/procurement/prog/training-cert/purchtrn\\_cert/training/training-and-certification-requirements-for-procurement-personnel/](http://www.window.state.tx.us/procurement/prog/training-cert/purchtrn_cert/training/training-and-certification-requirements-for-procurement-personnel/)

This diagram is not all inclusive and is only provided as an example for state agencies to use as a guide to determine who is required to attend the purchasing training required by Gov't Code §2155.0178

## **Purchaser Training**

TPASS's purchaser training and certification program consists of the following three training classes:

### ***Texas Basic Public Purchasing (BPP)***

Basic Public Purchasing is an entry level survey course covering the principles of public purchasing in Texas. By taking this class the learned will be able to:

- Demonstrate a general knowledge of Texas Public Purchasing requirements.
- Explain the various steps in the procurement cycle.
- Perform purchasing responsibilities in an ethical manner.
- Prepare flexible, accurate, clear, competitive and simple (FACCS) specifications.
- Select the state approved purchasing method that will result in a best value acquisition for the state.
- Define their delegated purchasing authority.
- Efficiently and effectively solicit vendors.
- Compare and contrast bids and proposals.
- Make a best value determination for contract award.
- Identify logistical impacts to the purchasing process.
- Report and document required information.
- Navigate the TPASS website to find needed information.
- Enter the APP class (if required) with a minimum knowledge base.

### ***Texas Advanced Public Purchasing (APP)***

Advanced Public Purchasing is a more in-depth look at the purchasing techniques and concepts introduced in Basic Public Purchasing. By taking this class the learner will be able to:

- Use project management tools to effectively manage contracts.
- Describe how to identify and minimize risks when making high-dollar purchases.
- Apply technical writing principles and techniques to create FACCS specifications.
- Conduct negotiations using basic skills, techniques and strategies.
- Describe the various state contracts and when to use each.
- Improve contract administration skills.



## ***Cost & Price Analysis, Negotiations, Contract Administration (CNC)***

The CNC class is an advanced class designed for experienced purchasers. By taking this class the learner will be able to:

- Explain the difference between cost and price.
- Illustrate how the economy influences pricing.
- Use costs and price analysis to help make a best value determination for contract award.
- Evaluate the steps and techniques in the negotiation process.
- Develop an effective negotiating team.
- Define the proper steps for contract termination.
- Identify and manage vendor performance strengths and weaknesses.

A current class schedule is available at <https://cmbreg.cpa.state.tx.us/reg/showclasses.cfm>

## **Purchaser Certification**

### ***Certified Texas Purchaser (CTP)***

For purchases between \$0.00 and \$25,000, even though no formal certification is required, individuals must have attended the Basic Public Purchasing Class within six months of employment.

CPT certification is required for individuals to make purchases between \$25,000.01 and \$100,000.

The CTP exam is a multiple choice exam that concentrates on the basics of purchasing in Texas. The exam may cover anything in the Basic and Advanced Public Purchasing classes, the TPASS Procurement Manual and other materials supplied during the classes.

To be eligible for CTP certification, you must have one (1) year's purchasing experience, have completed the Basic and Advanced Purchasing classes or the equivalent (i.e. be currently certified as CPPB by NIGP or A.P.P. by ISM) and receive a 70% or higher on the CTP exam.

### ***Certified Texas Procurement Manager (CTPM)***

CTPM certification is required for individuals to make competitive purchases over the amount of \$100,000

The CTPM exam is a multiple choice exam that concentrates on advanced purchasing skills including cost and price analysis of goods and services, advanced negotiation techniques and contract administration and management. The exam may cover anything in the Basic, Advanced and CNC Purchasing classes, the TPASS Procurement Manual, the Contract Management Guide and other materials supplied during the classes.

To be eligible for CTPM certification, you must have three (3) years purchasing experience, have completed the Basic, Advanced and CNC Purchasing classes or the equivalent (i.e. be certified as CPPO or C.P.M. by ISM) and receive a 70% or higher on the CTPM exam.

**Purchasing Experience: Procuring commodities, equipment or services applying procurement guidelines, rules, policies and laws; i.e.** prepares or assists with the preparation of specifications, Identifies and/or selects potential vendors, prepares and advertises solicitation documents, assists with reviewing tabulations and analyzing bids to determine the lowest and best responses for award recommendation, prepares and issues purchase orders to awarded vendors.

### **Maintaining Certification**

State of Texas purchasers certified through TPASS's Training and Certification program are required to complete 120 hours of continuing education over a five (5) year period, beginning from the issue date or last renewal date of the Texas certification, with no more than 45 hours during any one year period.

Current professional development class schedules are listed at <https://cmbldreg.cpa.state.tx.us/reg-pd/index.cfm>

To assist certified purchasers with finding continuing education opportunities, TPASS maintains a continuing education clearinghouse on its website at <http://esbd.cpa.state.tx.us/cptout/>

### **Contract Manager Training (CMT)**

The 79<sup>th</sup> Legislature mandated that state contract management personnel be trained and certified to the extent required by the Texas Comptroller of Public Accounts (TPASS). The program developed by TPASS to satisfy this mandate contains three (3) levels of required training.

### **Who Should Attend**

In accordance with Texas Government Code §2262.053, each state agency shall ensure that the agency's contract managers complete the training developed under this section.

In addition to state agencies, employees of political subdivisions and other governmental entities may attend. Examples include school districts, police and fire departments, city and county governments and community colleges.

For more information, please view the diagram found at TPASS's website at: <http://www.window.state.tx.us/procurement/prog/training-cert/cmt/training/requirements/>

This diagram is not all inclusive and is only provided as an example for state agencies to use as a guide to determine who is required to attend the contract manager training required by Gov't Code §2262.053.

TPASS's contract manager training program consists of three (3) training classes:

***Contract Management Performance and Source Selection (CMPSS)***

***Project Management Principles (PMP)***

***Advanced Negotiation Strategies (ANS)***

A current class schedule is listed at <https://cmbreg.cpa.state.tx.us/reg-cm/index.cfm>

Contract Management Program information (testing, certification, applications, and publications) is available at: <http://www.window.state.tx.us/procurement/prog/training-cert/cmt/>

## **Training and Certification Program and Classes Registration**

Training and Certification Program

<http://www.window.state.tx.us/procurement/prog/training-cert/>

Students may register for classes on line at

<http://www.window.state.tx.us/procurement/training.html>

Other forms (i.e. list of certified individuals, testing and certification applications) are available at [http://window.state.tx.us/procurement/prog/training-cert/purchtrn\\_cert](http://window.state.tx.us/procurement/prog/training-cert/purchtrn_cert)

For additional information, please contact TPASS's Training & Certification Program at 512-463-5355 or [cpt@cpa.state.tx.us](mailto:cpt@cpa.state.tx.us)

## **Section 1.2**

### **Code of Ethics & Conflict of Interest**

A special responsibility is imposed on everyone who is entrusted with the disposition of state funds. As purchasing personnel, we are required to perform with the highest integrity while constantly being asked to manage state contracts more effectively, secure better economic results, speed up the procurement process and be innovative in accomplishing our mission.

State officials and state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business.

The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.

This section sets out the ethical standards of conduct required of TPASS employees, vendors, potential vendors, and employees of other state agencies when acting under authority delegated from the TPASS. Every person employed by a public purchasing agency should abide by a code of ethics. In accordance with state law and TPASS Rule (34 Texas Administrative Code §20.41), agencies, when purchasing under TPASS-delegated authority, shall adhere to the following ethical standards:

#### **A state employee may not:**

- participate in any work on a contract knowing that the employee, or member of that employee's immediate family, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment. The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, giving advice, investigation or similar action.
- solicit or accept anything of value from an actual or potential vendor;
- be employed by, or agree to work for, a vendor or potential vendor;
- knowingly disclose confidential information for personal gain; or
- be employed at a pay classification of A17 or B 9, Step 1 or higher if he or she is the spouse of an officer, manager, or paid consultant of a Texas trade association of businesses that contracts with the state. (See your Human Resources representative for verification of the equivalent pay classification which became effective 09/01/97).

#### **A former employee:**

A former employee who had a pay classification of A17 or B 9, Step 1 (see above note) or higher who ceases service or employment with a state agency on or after January 1, 1992, may not

represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge or other proceeding) in which the former employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility (see Texas Government Code § 572.054 Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense).

**A vendor or potential vendor may not:**

Offer, give, or agree to give a state employee anything of value.

**If a violation occurs:**

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions for disposition of the matter.

If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

Purchasing professionals have the right under law to have any ethics question reviewed and decided by the Texas Ethics Commission. If you wish to learn whether a specific action violates the ethics rules, please contact the Texas Ethics Commission, 201 E. 14<sup>th</sup> Street, 10<sup>th</sup> Floor, Austin, Texas 78701 or call them at (512) 463-5800 or (800) 325-8506 outside of Austin.

**The ethics provisions of 1 Texas Administrative Code §111.4 apply to employees, vendors and potential vendors acting under delegated authority. In consultation with the Comptroller's office, the Ethics Commission is required, under Section 1.07 of House Bill 3560, to adopt new rules to implement the specific ethics provisions of that legislation as they relate to TPASS. Likewise under Section 3.10 of House Bill 3560, the Ethics Commission is required to adopt new rules to implement the specific ethics provisions of that legislation as they relate to the TPASS.**

**Conflict of Interest:**

All purchasing staff of a state agency who have been delegated the authority to purchase must also sign a Conflict of Interest statement each year. One copy of the signed statement should be given to the employee, with a copy to the employee's supervisor and other copies distributed according to individual agency requirements. The following is the Conflict of Interest statement used by TPASS.

# CONFLICT OF INTEREST

## TEXAS GOVERNMENT CODE §2155.003

Under Texas Government Code § 2155.003, a TPASS employee may not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TPASS or purchasers from other state agencies.

I certify that I have read and understand the above statement.

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Employee Signature

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Date

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Printed Name

cc: Personnel File  
Supervisor's File

## Section 1.3

# Reports and Notifications

Reports required by the Comptroller of Public Accounts (TPASS) rules, or other statutory authority:

REPORTS			
No.	Report	Due to TPASS	Reference TAC – Texas Administrative Code PM – Procurement Manual
1.	<b>State Use Exceptions</b> List of all items/services purchased as exceptions	<b>15th working day of each month through TPASS portal</b>	<ul style="list-style-type: none"> <li>• <b>Human Resources Code §122.016</b></li> <li>• <b>Government Code §2155.138(a)</b></li> <li>• <b>PM Section 2.5</b></li> </ul>
2.	<b>Historically Underutilized Businesses</b>	<b>March 15th and September 15<sup>th</sup></b>	<ul style="list-style-type: none"> <li>• <b>Government Code §§2161.121(b), 2161.122, 2161.124</b></li> <li>• <b>PM Section 2.28</b></li> </ul>
3.	<b>Procurement Plan</b>	<b>November 30<sup>th</sup> Submit updates and Changes as they occur</b>	<ul style="list-style-type: none"> <li>• <b>34 TAC, §20.41(h)</b></li> <li>• <b>PM Section 1.3</b></li> </ul>
	TAC 20.41(h) State agencies shall formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the CPA's Procurement Manual. An agency must submit a copy of the procurement plan during the CPA's audit of the agency's purchasing documents or upon request by the CPA.		
4.	<b>Purchasing Activity under Delegated Authority</b>	<b>May 1 of each year</b>	<ul style="list-style-type: none"> <li>• <b>TAC 20.41(j)</b></li> </ul>
	TAC 20.41(j) -- Reporting Purchasing Activity under Delegated Authority. State agencies will report to the CPA, not later than May 1 of each year regarding the previous six-month period and on November 1 of each year regarding the preceding fiscal year, information related to delegated purchasing activity for goods and services in the form prescribed by the CPA.		
5.	<b>Vendor Performance</b>	<b>Ad Hoc - Required for purchases over \$25,000 but recommended for all purchases and all contracts upon closure</b>	<ul style="list-style-type: none"> <li>• <b>Government Code §2155.077</b></li> <li>• <b>34 TAC §20.108</b></li> <li>• <b>PM Section 2.36</b></li> </ul>
	TAC 20.108(b) -- State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the CPA or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from CPA's procurement rules and procedures.		
6.	<b>Recycled, Remanufactured or</b>	<b>January 1st of each year</b>	<ul style="list-style-type: none"> <li>• <b>Government Code §2155.448</b></li> <li>• <b>TAC 20.135(e)</b></li> </ul>

	<b>Environmentally Sensitive Commodities or Services</b>		• <b>PM Section 4.0</b>
	TAC 20.135(e) -- In accordance with Texas Government Code §2155.448(c), not later than January 1 of each year, each state agency, excluding institutions of higher education, must deliver a report of total expenditures for purchases of goods and services that have recycled material content that are remanufactured or environmentally sensitive. These reports shall be made to the TPASS at <a href="https://portal.cpa.state.tx.us/">https://portal.cpa.state.tx.us/</a> . Texas multiple-award schedule (TXMAS) recycled, remanufactured or environmentally sensitive contract purchases may be added to this report.		
<b>7.</b>	<b>Print Shop Data</b>	<b>Quarterly and Annually</b>	<b>TAC 20.261(c)</b>
	TAC 20.261 (c) -- (re: CCG state print shops) Each print shop shall provide quarterly data to the CPA, which will summarize this information in quarterly and annual reports.		
<b>8.</b>	<b>Travel Related Purchases outside of Travel Credit Card</b>	<b>Monthly before the 28<sup>th</sup> day following the reporting month</b>	<b>TAC §§20.306(e) and 20.308(a)</b>
	<p>TAC 20-306(e) Monthly reporting. The reports required by this subsection are for those travel services not charged to a state travel credit card.</p> <p>(1) State agencies shall report the expenditures, as the total dollars spent, and activities, as the total number of trips and days of rental or lodging, relating to travel services as follows:</p> <p>(A) Air, bus and rail travel: total dollar spend and total number of trips;</p> <p>(B) Rental car: total dollar spend, total number of trips, and total rental days;</p> <p>(C) Hotel/lodging: total dollar spend, total lodging trips; total number of nights;</p> <p>(D) Travel reservation and booking fees: total dollar spend and total number of reservations.</p> <p>TAC 20.308(a) Contract and non-contract travel services for lodging, rental vehicles and other necessary travel expenses shall be charged to state travel credit cards, when feasible; purchases by other methods shall be reported monthly pursuant to §125.6(e).</p>		
<b>9.</b>	<b>OVFM Fleet (Vehicles)</b>	<b>Monthly</b>	<b>Government Code §2203.001 34 TAC §20.349</b>
	TAC 20.349 -- The Vehicle Use Report shall show the purpose for which the vehicle was used, the miles traveled, the amount of fuel and oil consumed, passengers carried and other information deemed necessary by the CPA.		

<b>NOTIFICATIONS</b>		
<b>Solicitations</b> For commodities or services with expected value of \$25,000 or more	Electronic State Business Daily (ESBD)	<ul style="list-style-type: none"> <li>• Government Code Title 10, Subtitle D</li> <li>• Government Code §2155.083</li> <li>• 34 TAC §20.212.</li> </ul>
<b>Major State Contract</b> Expected value of \$5,000,000 or more	Electronic State Business Daily (ESBD)	<ul style="list-style-type: none"> <li>• Government Code §2177.052</li> </ul>



## **Procurement Plan (Due November 30th)**

In accordance with Texas law, the TPASS requires each agency to formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidelines contained in the State of Texas Procurement Manual. Agencies shall submit their procurement plans electronically to the Comptroller's Office by November 30<sup>th</sup> annually.

### **Contents of the procurement plan**

1. Organizational chart of purchasing division/office.
2. Credit card internal procedures if participating in the Procurement Card Program.
3. Protest procedures.
4. List and sample of signatures authorized to approve or sign a proprietary justification letter.
5. List and sample of signatures authorized to approve agency membership fees.
6. The training and certification status of the purchasing employees.
7. List of purchasers authorized to purchase on behalf of the State.
8. Invitation for Bid (IFB) form.
9. Internal purchasing procedures for agency.
10. Conflict of interest statement(s) (statement signed annually for each purchaser or a memo stating that one is in the purchaser's personnel file).
11. Internal purchasing procedures for EPLS (Excluded Parties List System).
12. The three (3) highest priority purchases the agency expects to make in each fiscal year that are not available through a term contract (this is a new requirement).

Questions regarding the Procurement Plan should be directed to the CATRAD Team Lead, at 512-463-8169.

### **Legal References:**

Texas Government Code § 2155.132

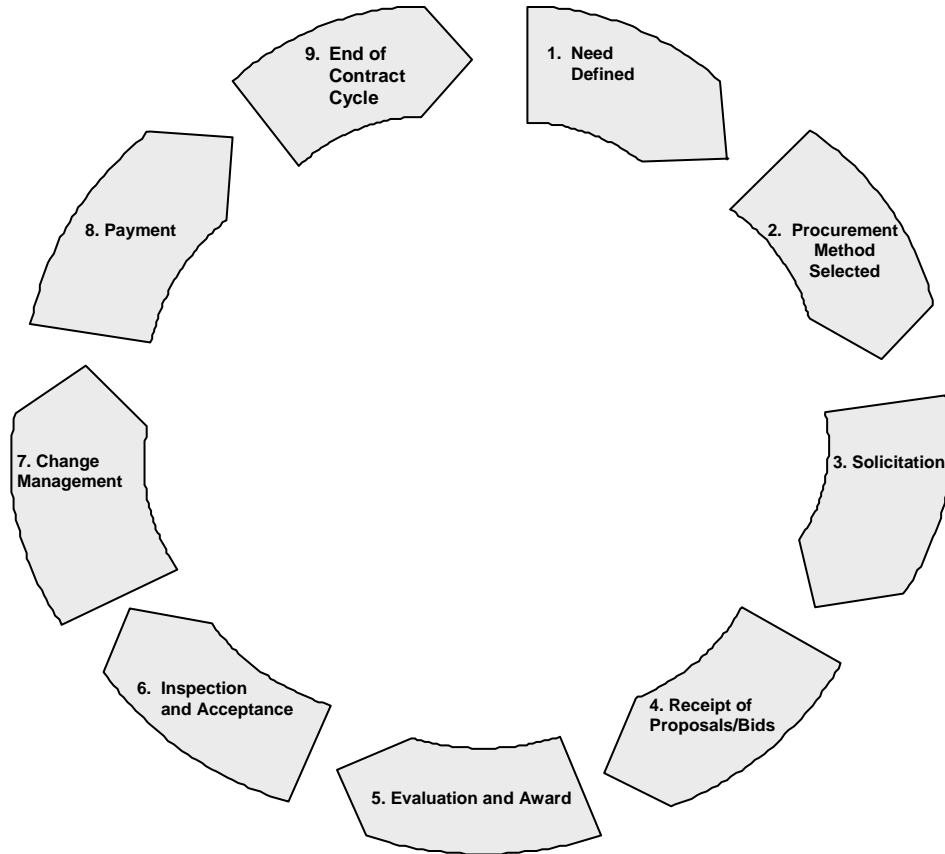
34 Texas Administrative Code §[20.41](#)(h)

## **Section Two**

### **The Procurement Cycle**

## THE STATE OF TEXAS PROCUREMENT CYCLE

The State of Texas Procurement Cycle outlines the process a purchaser uses to define, establish, and finalize a purchase that will satisfy end user needs. The following steps support Texas public purchasers in determining the methods, sources, and procedures for executing purchases in the best interest of the state.



### Procurement Cycle Steps:

1. **Need Defined**—End User/Requestor submits request and specifications.
2. **Procurement Method Selected**—Based on type and estimated cost of good/service as well as purchasing authority, purchaser determines the procurement method that will result in a best value acquisition for the state.
3. **Solicitation**—Purchaser creates the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.
4. **Receipt of Bids and Responses to Solicitation**—Vendors submit their response to the solicitation.
5. **Evaluation and Awards**—Purchaser(s) review the responses from vendors, determine compliance with the solicitation and make an award based on the pre-defined best value criteria.
6. **Inspection and Acceptance**—End User receives goods or services for inspection, determining acceptance or rejection.
7. **Change Management**—End User and Purchaser coordinate with vendor on any changes.
8. **Payment**—Agency makes payment in accordance with the Prompt Payment Act.
9. **End of contract cycle**—Agency closes out contract for services. Vendor performance report filed. For commodities, disposal of item that has completed its life cycle in accordance with state surplus property procedures.

## **Section 2.0**

### **Identify Needs**

Agency personnel (requestor or end user) will communicate to the purchaser(s) the commodity or services needed. The most common document used to identify the need is a purchase requisition. The requisition should include the detailed specifications of the commodity or service.

Provide any additional information such as:

- Requirements
- Delivery timeline
- Special circumstances
- Catalog price comparison
- Previous purchase of the same specification or Statement of Work
- Documentation of research, links or pricing
- Manufacturer links or the source used for specifications.
- Reasonable cost estimates based on market research, catalog comparison, or historical price

## **Section 2.1**

# **Acquisition and Disposal of Surplus Property**

### **Federal and State Surplus Property**

The Federal and State Surplus Property programs are administered by the Texas Facilities Commission (TFC). Each program has its own laws, rules and procedures (40 USC §484).

### **Federal**

State agencies, political subdivisions, and certain nonprofit organizations are eligible to receive federal surplus property through TFC. Participating groups must be approved by TFC as eligible under federal guidelines to receive donated property.

The federal surplus property program operates on a cost recovery basis; it is not funded by the legislature. Participants pay a handling fee, which is a fraction of the original acquisition cost, to obtain property through the program.

Federal surplus property is distributed through three districts in Texas. The North District is located in Fort Worth, the South District in San Antonio and the Central District in Austin. Each regional office operates a warehouse where surplus property is collected, sorted, and stored prior to distribution. Participating organizations may send authorized representatives to any district warehouse to inspect and obtain property. Opportunities also exist for participating agencies to pick up property at government locations that may be located at a more convenient site than a district warehouse. TFC publishes a complete inventory of federal property on its Web site at: <http://web7.incircuit.com/eams/f?p=1012:1500:625418163431519::NO:1500>. Further information may be obtained by calling the Federal Surplus Property Program at (512) 475-3705.

### **State**

State agencies are required to list their surplus property on the CPA Web site “TexasAhead” for 10 business days. During that time only eligible entities (other state agencies, political subdivisions, and approved assistance organizations) may obtain the property. A list of available surplus property and state agency contacts is available on the TexasAhead Web page: <http://www.texasahead.org/lga/surplus/>. The list is updated daily.

During this 10-day period, the agency that owns the property determines the price, if any, for each item. State agencies have priority over all other eligible entities during the 10-day period. If no state agency requests the property, the first political subdivision or assistance organization that commits to the price is entitled to the property. Items not transferred are disposed of through public sales.

State agencies and political subdivisions automatically qualify to receive surplus property. Assistance organizations interested in obtaining surplus property are required to apply for program eligibility with the TFC. If TFC approves an assistance organization’s application, it will be eligible to receive property from all state agencies for a period of two years, unless

otherwise specified. After two years assistance organizations must re-apply to participate in the program.

The Application for Assistance Organizations form is located on the TFC Web site at:  
<http://www.tfc.state.tx.us/divisions/supportserv/prog/statesurplus/AssistanceOrgApplication.pdf>

A list of approved assistance organizations is located on the TFC Web site at:  
<http://portal.tfc.state.tx.us/surplus/state/tbassistanceorganizations.asp>

For additional information, call the Surplus Property Program at 512-463-2688.

**Retail Storefronts:** <http://portal.tfc.state.tx.us/surplus/state/>

The State of Texas operates retail storefronts for the sale of state surplus property to the public in the following locations:

**Austin District**  
6506 Bolm Road  
Austin, Texas 78721  
Phone: 512-463-1990

**Fort Worth District**  
2826 North Beach Street  
Fort Worth, TX 76111-6201  
Phone: 817-831-6767

**San Antonio District**  
2103 Ackerman Road  
San Antonio, TX 78219-3017  
Phone: 210-661-2381

Inventories can be found at the Surplus Property section of the TFC Web site under Retail Stores - State Surplus Property - Locations and Inventories.

State agencies may obtain property priced at less than \$200 for official use from the storefront locations free of charge with the exception of voluntarily surrendered airport property. State agencies may obtain property priced at more than \$200 for official use for half price with the exception of vehicles.

For additional information on the State Surplus Storefronts, call 512-463-1990 or E-mail:  
[storefront.surplus@tfc.state.tx.us](mailto:storefront.surplus@tfc.state.tx.us)

**Legal Authority:**

[Texas Government Code Chapter 2175](#)

40 USC§484

[Texas Administrative Code, Title 1, Part 5, Chapter 126](#)

## Section 2.2

### Trade-In Equipment

A state agency may trade in agency owned equipment for new equipment of the same or similar type if it is in the best interest of the state. However, a state agency may not trade in property that has been declared either surplus or salvage; such property must be disposed of in accordance with Government Code 2175 through the Texas Facilities Commission (TFC) State Surplus Property program.

Trade-ins are not allowed through orders placed against TPASS term contracts.

It is very important for an agency to have documentation supporting the equipment's value to make a decision whether to process as surplus or place in a solicitation for the new equipment.

#### **Trade-In Surplus:**

If the state could reasonably realize greater cost savings by declaring the equipment as surplus or salvage, the equipment should be disposed of under TFC's State Surplus Property program and through the posting for 10 days through the TPASS's TexasAhead Web page:

<http://www.texasahead.org/lga/surplus/>. Reference Section 2.1, Acquisition and Disposal of Surplus Property.

#### **Trade-In through Solicitation:**

If an agency determines that a trade-in will provide the greater cost savings, the file should contain an estimated approximate value for that determination and the solicitation documentation must include the following:

##### Requirements and Clauses:

- The acceptance of the trade-in amount is at the state's option
- Release of trade-in equipment will not be allowed until final delivery and acceptance of the new equipment
- Deadline for pickup of the equipment by awarded respondent "where is, as is"

##### Elements for the equipment:

- Age of equipment
- Condition of equipment
- Make (Manufacturer/Brand)
- Model Number
- Serial Number (if applicable)





## Section 2.3

### Used Equipment

As a general rule, an agency should procure new equipment, but sometimes it is necessary or advantageous to purchase used or demonstrator equipment and supplies. The most common reasons are:

- the inability to secure new equipment;
- the lack of adequate funds for new equipment; or
- used equipment that will satisfy the agency's need available at a substantial savings.

#### **Procurement of used and demonstrator equipment is to be processed as follows:**

The agency must following the procurement method applicable to the estimated amount for the procurement following the processes outlined in Section 2.4, Selecting a Procurement Method.

#### **Within Delegated Authority:**

Include in the procurement file a statement that the equipment has been examined. Provide a description of the condition and value and the reasons for inability to secure new equipment and/or that the used equipment would provide a substantial savings.

#### **Non-Delegated Authority:**

If the value of the procurement exceeds the agency's delegated authority, forward an Open Market Requisition with related attachments to include a statement from the agency that the equipment has been examined, describe the condition and value, and the reasons for inability to secure new equipment and/or that the used equipment would provide a substantial savings.

Forward the Open Market Requisition with all applicable attachments to the Texas Procurement and Support Services division by e-mail to: [open.market@cpa.state.tx.us](mailto:open.market@cpa.state.tx.us)

TPASS will process a solicitation, evaluate and award on behalf of the agency.

The Open Market Requisition form can be found in the Procurement Forms Library at this link: [http://www.TPASS.state.tx.us/procurement/tools/proc\\_forms/](http://www.TPASS.state.tx.us/procurement/tools/proc_forms/)

## Section 2.4

### Selecting a Procurement Method

If the requirements, specification(s) or Statement of Work (SOW) meet the criteria for:	Follow the procedure in:
<b>Emergency purchase</b>	<i>2.12 Emergency Purchases</i>
<b>Internal repair</b>	<i>2.10 Delegated Purchase Procedure and Strategic Sourcing Principles</i>
<b>Proprietary purchase</b>	<i>2.15 Proprietary Purchases</i>
<b>Scheduled Managed Contract</b>	<i>Section 2.8 Scheduled Managed Contracts</i>
<b>Professional and consulting services</b>	<i>Section 2.14 Professional and Consulting Services</i>
<b>Telecommunications services</b>	<i>Section 2.11 Purchase of Automated Information Systems/Telecommunications Commodities and Services Purchases</i>

Compare the requirements and specifications, or SOW, with the commodities and services.

IF THE COMMODITY OR SERVICE:	THEN
<b>is available through a Council on Competitive Government (CCG) contract,</b>	purchase it according to the instructions in the CCG contract <i>See Section 2.15.1 Council on Competitive Government Contracts</i> (CCG) for more information. <a href="http://www.ccg.state.tx.us/contracts/">http://www.ccg.state.tx.us/contracts/</a>
<b>is available through TIBH Industries, Inc. meets the specification(s) and other requirements,</b>	the state agency or university must purchase it from TIBH through TxSmartBuy for commodities and direct with TIBH for services. <i>See Section 2.5.1 the Texas Council on Purchasing from People with Disabilities</i> for more information. <a href="http://www.tibh.org/catalog/index.php">http://www.tibh.org/catalog/index.php</a>
<b>is available through the Texas Correctional Industries (TCI) and meets the specification(s) and other requirements,</b>	the state agency must purchase it from TCI through TxSmartBuy for commodities and direct with TCI for services <i>See Section 2.5.2 Texas Correctional Industries</i> for more information. <a href="http://www.tci.tdcj.state.tx.us/">http://www.tci.tdcj.state.tx.us/</a>
<b>is qualified as Automated Information System (AIS) or IT</b>	consider purchasing from Information and Communications Technology (ICT) cooperative contracts through DIR. Contact the <i>Department of Information Resources</i> for more information. <a href="http://www.dir.texas.gov/ict/Pages/contracts.aspx">http://www.dir.texas.gov/ict/Pages/contracts.aspx</a>
<b>a TPASS TxSmartBuy Term Contract</b>	Order through the TxSmartBuy on-line system <i>See Section 2.6 Term Contracts</i> for more information on TPASS Term Contracts. <a href="http://www.window.state.tx.us/procurement/contracts/">http://www.window.state.tx.us/procurement/contracts/</a>

<b>a TPASS Managed Contract</b>	Order directly from the contractor(s) by issuing an internal agency purchase order
<b>is available through a Texas Multiple Award Schedules (TXMAS) contract</b>	obtain a price quote from as many TXMAS contractors as are necessary to provide a best value determination. See <i>Section 2.8.1 Texas Multiple Award Schedule Contracts</i> for more information on TPASS TXMAS Contracts.

**Additions to existing TxSmartBuy and Managed contracts:** Provided there is already a contract identified above with a National Institute for Governmental Purchasing (NIGP) classification, it is possible to add a particular commodity or service to the identified contract. Request additions to existing contracts by notifying TPASS Purchasing Operations at [open.market@cpa.state.tx.us](mailto:open.market@cpa.state.tx.us).

**Best-value comparison:** Compare the collected prices from the above options if available, and select the contract which provides the best value to the State of Texas. For example, if a TPASS Managed contract provides the best value, use the process outlined in *Section 2.8.1 Term Contracts* to purchase the specified item or service. Include the following statement on the Purchase Order: “Procurement methods were evaluated and best value is provided by *insert ‘TPASS Term Contract #,’ ‘TXMAS Contract#’*”.

**Note:** If you were unable to find the commodity or service from one of the contract options listed above in the following order, CCG, TIBH, TCI, DIR, TPASS Automated and Non-Automated Contracts, or TXMAS Contracts, use the following procedure:

Your agency has delegated authority for items in the following categories. Follow the instructions in *2.10 Delegated Purchase Procedure and Strategic Sourcing Principles*. [34 Texas Administrative Code 20.41](#)

- A commodity or service with an estimated purchase price of \$5,000 or less,
- Emergency purchases,
- Commodity purchases of goods, including goods for resale that do not exceed \$25,000,
- Purchases of services, including services for resale, the estimated cost of which does not exceed \$100,000,
- Purchases of perishable items,
- A direct publication,
- Fuel, oil or grease,
- A distributor purchase, or
- An internal repair

If the above categories do not apply to your specifications, requirements or SOW, follow the instructions in *Non-Delegated Purchases below*.

# Non-Delegated Purchases

## Section 2.5

### Set-aside Purchases

“Set-aside Purchases” are those which do not require competitive procurement. Examples of Set Aside programs in Texas are the State Use program authorized by Texas Human Resources Code Chapter 122 and the Texas Correctional Industries governed by Texas Government Code Chapter 497. Agencies shall access and utilize the commodities and services provided by the State’s authorized set-aside programs without the necessity of competition. **All purchases issued to either of the State’s authorized set-aside programs, whether directly issued or issued through TPASS’s automated procurement systems, are automatically delegated to state agencies, regardless of dollar thresholds. When paying for exempt purchases (TIBH or TCI) using a warrant or Interagency Transaction Voucher (ITV), use the “exempt” code of “document type 9” in USAS.**

#### Section 2.5.1

##### **Texas Council on Purchasing from People with Disabilities (TCPPD)**

The TCPPD (Council) has the statutory responsibility for implementing the State Use Program, which establishes a set-aside purchasing program for commodities and services from community rehabilitation programs which employ disabled Texans. The State Use Program assists persons with disabilities in achieving maximum personal independence by engaging in useful, productive employment activities. The Council contracts with a Central Nonprofit Agency (CNA) to administer the day-to-day operations of the program. Since 1978, TIBH Industries has been the CNA under contract with the Council.

As the contracted CNA for the Texas State Use Program, TIBH serves as the program's marketing and management organization. In this capacity, TIBH handles everything from order processing the fulfillment and invoicing of purchase orders to market history analysis, pricing requests, and CRP registration and compliance. Commodity items and services offered in the TIBH catalogue are reviewed and approved by TCPPD.

Note: if a product is approved, it is set aside from competitive bidding and entered on a CPA term contract. Purchases of services approved by TCPPD from the TIBH catalogue do not require competitive bidding.

**Authority: Human Resources Code §122.008 - Procurement at Determined Price** requires all state agencies and universities to purchase from the program. Specifically, the law states: “A suitable product or service that meets applicable and functional specifications established by the state or its political subdivisions and that is available within the time specified must be procured”

from a community rehabilitation program at the price determined by the Council to be a fair market price.” <http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.122.htm#122.008>

### **TCPD/TIBH Purchases - Monthly Report on Set Aside Exceptions (Due 15th working day of each month)**

The Human Resources Code §122.16(b), requires the TPASS to provide a monthly report (known as the State Use Report or Exception Report) to the Texas Council on Purchasing from People with Disabilities (TCPD) listing all items/services purchased as exceptions to Texas Human Resources Code §122.008 and Texas Government Code §2155.138(a). In order for TPASS to provide this information to the TCPD, each state agency must provide to TPASS all delegated purchases made as exceptions to the set-aside contracts as listed below. The report must include:

- PO Number
- PO Date (mm/dd/yyyy format)
- Commodity Code Products/Services Purchased as Exception
- Quantity or Duration
- Unit of Measure

The link to the Exception Report is located at:  
<https://portal.TPASS.state.tx.us/tcpd/reportmenu.asp>

The link to the State Use Report Instructions is located at:  
[http://www.window.state.tx.us/procurement/pub/state-use-report/State\\_Use\\_Reporting\\_Manual.pdf](http://www.window.state.tx.us/procurement/pub/state-use-report/State_Use_Reporting_Manual.pdf)

## **Section 2.5.2**

### **Texas Correctional Industries (TCI) - Texas Department of Criminal Justice (TDCJ) Institutional Division**

Texas Correctional Industries is a department of the Texas Department of Criminal Justice. Using primarily offender labor, TCI manufactures goods and provides services to city, county, state and federal agencies, public schools, public and private institutions of higher education, public hospitals and political subdivisions.

Competitive bidding is not required for items purchased from TCI under the Prison Made Goods Act, except for printing. Printing procurement for state agencies requires adherence to the requirements detailed in *Section 2.15.1, and authorized by the Council on Competitive Government*.

For all orders placed with TCI, the State agency shall document the following:

- A written quotation is obtained from TDCJ/Institutional Division (Texas Correctional Industries-TCI).

- The agency issues a purchase order directly to TDCJ - Institutional Division. Note the following on the purchasing documentation, "**the award was made under the Prison Made Goods Act and is noncompetitive.**"

**Authority: Government Code §497.024** requires state agencies to ensure that the following requirements are met: "If the office produces an article or product under this subchapter, an agency of the state or a political subdivision may purchase the article or product **only** from the office." TCI requirements do not apply to higher education. (Texas Government Code §497.0211 exempts institutions of higher education.)

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.497.htm#497.024>

The Act goes on to state in **Government Code §497.025(c)** that "An agency may decline to purchase goods or articles from [TCI] if the agency determines, after a final opportunity to negotiate on price, and the comptroller certifies, that the goods or articles can be purchased elsewhere at a lower price."

**Prison Made Goods Act waivers** - If a state agency desires to purchase a product/service offered by TCI as set forth in its catalog from a source other than TCI, a waiver must be obtained. The waiver request can be based on a substantial difference in specifications which could include delivery, or on price differences, or both. **Note:** TCI is located on the CMBL and bids for printing must include a bid or no bid response (in lieu of the waiver) for this commodity. Please reference Section 2.15.1 for procedures for printing requests.

To request a waiver from TCI purchasing requirements, the TCI Waiver Form available in the Procurement Forms Library at the following link must be completely filled out and submitted to TCI as indicated on the form.

[http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html)

If TCI can provide the commodity, but the agency finds a lower price from a vendor in the private sector, the agency must offer TCI an opportunity to match the lowest price. If TCI cannot lower their price and/or meet all specifications, then TPASS must certify that the goods or articles can be purchased elsewhere at a lower price. This certification process includes an evaluation of the bid tabulation and responses from the solicitation.

The requesting agency will send the appropriate bid documents to TPASS, which will confirm that the goods or articles may indeed be purchased elsewhere, and send confirmation back to the requesting agency. For example, this certification may state: "TPASS has reviewed and certified that...."

Contact the TPASS, Texas Procurement and Support Services (TPASS) to obtain this confirmation.

Waiver requests will be evaluated on a case-by-case basis. Should a request be denied, an appeal may be made to the CPA. To expedite processing an appeal, be sure to provide the waiver identification number found on your waiver denial letter. Refer to TCI Waiver Request Form for TCI Customer Service.

## **Section 2.6 Term Contracts**

### **State Contracts**

Texas Procurement and Support Services (TPASS), a division of the TPASS, establishes term contracts by National Institute of Governmental Purchasing (NIGP) commodity/service codes as a source for state agencies, universities, and the members of the Cooperative Purchasing Program.

In accordance with the delegations established by Government Code §2155.132, 34 Texas Administrative Code §§20.40-20.41 and this Procurement Manual, state agencies are required to use the established term contracts for procurement of goods and services. All term contracts may be accessed on the Internet at the following address:

[http://www.window.state.tx.us/procurement/contracts/all\\_term/](http://www.window.state.tx.us/procurement/contracts/all_term/)

### **Types of Contracts: TxSmartBuy, Managed, CCG Travel and TXMAS**

When utilizing term contracts, ordering entities shall review specific contracts for minimum purchase limits, delivery terms, and any special conditions. Purchase orders generated through the TxSmartBuy on-line ordering system should be reviewed by the agency for completeness and accuracy. Agencies are directly responsible for any errors and the subsequent corrections.

The applicable Purchase Category Code (PCC) is referenced by each type of contract.



### **TxSmartBuy Contracts –PCC A**

The TxSmartBuy contracts require on-line purchase order processing through the TxSmartBuy ordering system.

Click on the link to learn more about the TxSmartBuy ordering system or copy/paste into your web browser: <http://www.window.state.tx.us/txsmartbuy/>

The TxSmartBuy Help Web page provides access to System Demos; Purchaser Demos; System User Guides and other information for using the system. Click on this link or copy/paste into your web browser: <http://www.cpa.state.tx.us/txsmartbuy/help/>

E-mail [txsmartbuy@cpa.state.tx.us](mailto:txsmartbuy@cpa.state.tx.us) for purchaser access instructions.

## **Managed and CCG Contracts**

Information on Managed & CCG contracts is available at:

<http://www.window.state.tx.us/procurement/contracts/managed/index.php>

Managed Contracts: PCC C

CCG Contracts: Doc Type 9

Legal Cite for Purchase Order: Government Code 2162.105 State Council on Competitive Government

Managed contracts are identified in the term contract listing with the letter “M” as part of the Contract Number (ex: 999-M1) and the contractor specific requirements are listed in the “Details” for each contract. The pricing will be listed in the Contract Details or as a linked attachment.

CCG Contracts are identified in the term contract listing with the NIGP Class/Item applicable to the service or commodity. (ex: 645-32 Print Shop Specialty Paper and Supplies)

Managed contract(s) are usually unique to the needs of a specific agency; however, they may be utilized by all qualified entities. Each agency is required to issue one or more internal purchase order(s) referencing the contract number and forward directly to the contractor(s) to be eligible for the contract pricing.

CCG contracts are required to be used by all state agencies. Each agency is required to issue one or more internal purchase order(s) referencing the contract number and forward directly to the contractor(s) to be eligible for the contract pricing.

## **Travel and Corporate Charge Card**

A listing of travel and charge card contracts is available at:

<http://www.window.state.tx.us/procurement/contracts/travel/>

Types of contracts (not limited to):

- Airlines
- Corporate Charge Card
- Hotels
- Rental Car
- Travel Agency



For an overview of state travel and charge card contracts, access the State Travel Management Program at: <http://www.window.state.tx.us/procurement/prog/stmp/>.

## **TXMAS Contracts**

### **PCC X**

As an alternative purchasing method, TPASS utilizes Texas Multiple Award Schedule (TXMAS) contracts that have been developed from contracts awarded by the federal government or any other governmental entity of any state.

An overview of the TXMAS Program, its purchasing procedures and listing of active contracts is available at: <http://www.cpa.state.tx.us/procurement/prog/txmas/>

### **Contract Pricing and Price Adjustments – TPASS Term Contracts (TxSmartBuy and Managed)**

Many long-term contracts allow the contractor to request price adjustments according to the terms and conditions of the contract. Contract price changes must be submitted in writing by the contractor and approved by the TPASS Contract Management Office (TCMO). Requests for price adjustments will be processed within 15 days after receipt or by a date agreed upon by TPASS and the contractor.

TPASS communicates changes to any TPASS Contract through the GovDelivery e-mail system.

Sign up for TPASS e-mail lists (for state/local government) through the TPASS Web page under “Stay Connected!” at: <http://www.cpa.state.tx.us/procurement/>

Available lists are Procurement; Travel and State Contracting

### **TxSmartBuy**

Upon approval, TPASS will update the contract(s) in TxSmartBuy to reflect adjustments.

The pricing reflected on orders placed through TxSmartBuy should always be the current price. For instances where the price was not updated due to extenuating circumstances through TPASS, the agency (ordering entity) and/or contractor should forward the information to the TPASS Contract Management Office to process a revised purchase order through the system.

Agencies (ordering entities) will not have access to process changes to pricing for TxSmartBuy orders.

### **Managed Contracts**

Requests for price adjustments will be processed within 15 days after receipt of request from the contractor or by the date agreed upon by TPASS and the contractor. Upon approval, TPASS will update the price listing on the contract(s) on the Managed contract link.

## **Confirmation Orders**

**TxSmartBuy:** Confirmation orders are not allowed through the TxSmartBuy on-line ordering system.

## **Delegated Procurements and TPASS Managed, CCG and TXMAS**

TPASS does not recommend the use of confirmation orders (an order formally documented after the transaction has occurred) but realizes they may be necessary to facilitate expedited ordering during critical times. A contractor may choose to accept phone orders before receiving the actual written order. Because this is not a requirement in the terms of a TPASS contract, it is each contractor's decision whether or not to accept a phone order. Telephone orders are not written agreements and may cause difficulties among the parties regarding critical terms. If the contractor accepts the phone order, the ordering entity shall issue a purchase order as soon as possible and include the clause: "**Confirmation Order of (Date) - Do Not Duplicate. Order confirmed with (Name)**". Including the confirmation date is critical since it determines the price. Failure to clearly document the purchase as noted could allow the contractor to ship the order a second time when the written order is received, and the ordering entity may be liable for payment of the duplicate order or for restocking charges if a return is requested. If a price increases between the time the verbal order is placed and the date of the written order, the verbal order date will control the price.

## **Blanket Orders**

Blanket orders are not allowed to be entered through the TxSmartBuy on-line ordering system

Blanket orders may be issued against TPASS Managed, CCG or TXMAS contracts,

Blanket orders are for stated delivery quantities on specific dates and the quantities are guaranteed. Agencies (ordering entities) placing blanket orders against these contracts are responsible for updating their orders during any term of the order with price changes.

## Section 2.7

### Open Market Solicitations

An **open market** solicitation is used to purchase a good or service by soliciting from any available source. The **open market solicitation procedure** is authorized by Texas Government Code §§2155.062(a)(3) and 2156.061.

This section provides guidance on how to manage the competition in an open market solicitation. It does not dictate who administers the competitive process. To verify that your agency has the delegated authority to administer a particular open market solicitation, follow the instructions in *Section 2.4, Selecting a Procurement Method*.

The open market procedure always includes a competitive solicitation process to ensure a truly competitive process and to provide an appropriate balance between administrative costs and potential savings.

Most common solicitation processes include:

#### **Invitation for Bid (IFB)**

An **invitation for bid (IFB)** or **invitation to bid (ITB)** is an invitation to vendors to submit a proposal on a specific commodity or service through a bidding process <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2156.htm#B> The IFB is generally the same thing as Request for Quote (RFQ) and is focused on pricing. The award is based upon the lowest bid meeting the minimum criteria for the specifications/requirements. Negotiations are *not* authorized when utilizing an Invitation for Bid (IFB) procurement method; however, if only one response is received, negotiations are allowed and encouraged.

#### **Request for Proposals – Reference the Contract Management Guide**

An RFP is a competitive solicitation that allows for negotiations. RFP evaluations may be based on factors other than cost and are typically associated with contracts for services, although the use of RFPs is encouraged for commodities as well. Additionally, the RFP method allows for Best and Final Offer (BAFO) negotiations prior to award.

#### **Request for Qualifications.**

A **request for qualifications (RFQ)** is a document often distributed before initiation of the RFP process. It is used to gather vendor information from multiple companies to generate a pool of prospects providing a short list of candidates who meet the desired qualifications.

### Open-Market Blanket and Standing Purchase Orders

In addition to single-purchase orders (POs), TPASS or a state agency with delegated authority may establish open-market blanket POs and open-market standing POs. Each of these PO types may include renewal provisions. Guidelines for each of these POs follow.

## **Open-Market Blanket Purchase Orders**

**An open-market blanket purchase order** is a purchase contract for a good or service for which an agency has a recurring need on an "as-needed" basis.

The advantages of this type of order include avoiding having to maintain large inventories and going to the administrative expense of processing frequent purchase orders.

A disadvantage of this type of order is that purchase quantities are not guaranteed, which may not result in the best prices.

With an open-market blanket PO, the contractor does not ship goods or perform services until an agency authorizes them to do so in writing ("Call Out" or "Release" document). A procedure must be established for recording blanket purchase order call outs/releases to assist an agency in meeting order inspection requirements. Purchase order call outs/releases may be used to purchase commodities and services only for the fiscal year in which the PO was issued. For example, you may not purchase consumables for the next fiscal year using a blanket PO established for the current fiscal year. When establishing an open-market blanket PO, include the following:

- The beginning and end of the period the blanket order covers.
- A statement noting that all deliveries are ordered on an "as required" basis.
- The estimated quantity.
- A statement limiting the maximum quantity that may be purchased.
- A statement that none of the quantities are guaranteed.

## **Open-Market Standing Purchase Orders**

**An open-market standing purchase order** is a purchase contract for a good or service for which an agency has a recurring need and is able to predetermine purchase quantities and delivery times. These orders differ from open-market blanket POs in that the goods are delivered on a predetermined schedule instead of on an as-needed basis.

## **Renewing Open-Market Blanket and Standing Purchase Orders**

To renew an open-market purchase order:

- There must be a provision in the original solicitation terms and conditions allowing for renewal. This provision may or may not require consent from the vendor.
- The renewal must be processed before the contract has expired.

## **Open Market Solicitation Procedures**

The correct open market procedure depends on the estimated dollar amount of the procurement and whether or not an agency has been delegated the authority to make the purchase, as explained below:

- **Open Market Informal Solicitation** is used for agency-administered procurements of commodities or services greater than \$5,000 but not greater than \$25,000. This process could be used by an agency to purchase perishable goods.
- **Open Market Formal Solicitation** is used for agency administered procurements of commodities or services greater than \$25,000. For example, this process could be used to purchase fuel, oil or grease or for a service purchase in excess of \$100,000 that has been delegated to your agency.
- **TPASS Administered Open Market Purchase** is used for TPASS administered open market purchases of commodities in excess of \$25,000 or for services in excess of \$100,000 which have not been delegated to an agency.

## Open Market Informal Solicitation

Procurements of commodities or services greater than \$5,000 but not greater than \$25,000.

The following provides instructions for performing an Open Market Informal Solicitation.

STEP	PROCEDURE
1	Collect the detailed specifications or scope of work for the required good or service. (See <i>Section 2.0, Identify Needs</i> )
2	Use the “ <a href="#">CMBL</a> Only” search criteria and the applicable NIGP Class(es) and Item(s) to locate at least three (3) vendors in the appropriate county, city or district that provide the required good or service, two (2) of which <b>must</b> be HUB vendors. If an agency is unable to locate two HUBs, the agency must make a written notation in the purchase file of all reference sources used.
3	With written approval from your agency head or designee provided in the agency’s Procurement Plan, non-CMBL vendors (including HUBS) may be added to the final vendor list to enhance competition. If applicable, also attempt to solicit a response from the vendor who last held the contract for the required good or service.
4	Print the CMBL vendor list including the approved supplemented vendors to include in the procurement file.
5	Solicit a response from each vendor identified in the previous steps. Response prices are considered firm for acceptance for 30 days from the solicitation due date. The acceptable methods for receiving informal responses (greater than \$5,000 but not greater than \$25,000) are: <ul style="list-style-type: none"> <li>• In person</li> <li>• Via direct mail</li> <li>• Over the telephone</li> <li>• Via facsimile transmission</li> <li>• Via electronic mail</li> </ul>

6	<p>Tabulate the responses and select the vendor that provides best value to the State. Include the following information in your tabulation:</p> <ul style="list-style-type: none"> <li>• CMBL vendors contacted, including those supplemented.</li> <li>• Corresponding response amounts</li> <li>• For HUBs, the ethnicity/gender of the TPASS Certified HUB</li> <li>• Awarded vendor</li> <li>• Statement of reasons for non-awards</li> </ul>
7	Keep a record of all responses. Make tabulations available for public inspection and retain the tabulation for inspection during any audit.
8	Process the award through issuance of a PO and obtain the authorized signature of your agency's purchasing director or designee as reflected in your agency's Procurement Plan.

### Open Market Formal Solicitation

Open Market Formal Solicitation is used for agency-administered open market purchases of services greater than \$25,000 and for commodities if delegated by TPASS or through statutory authority specific to an agency.

STEP	PROCEDURE
1	Collect the detailed specification or statement of work for the required commodity or service. ( <i>Section 2.0 Identify Needs</i> )
2	Commodities exceeding \$25,000 are required to be submitted to TPASS for processing by submitting an Open Market Requisition to <a href="mailto:open.market@cpa.state.tx.us">open.market@cpa.state.tx.us</a> unless an agency as the statutory authority to proceed.
3	Using the specification or the statement of work, create a written Invitation for Bid (IFB) or Request for Proposal (RFP). See the <a href="#">Procurement Forms Library</a> for a sample.
4	Post the solicitation information to the <i>Electronic State Business Daily</i> (ESBD) unless the purchase is specifically exempted under <a href="#">–Texas Government Code §2155.083.</a>
5	Using the <a href="#">CMBL</a> Only search criteria and the applicable NIGP Class(es) and Item(s) to, locate all vendors who provide the required commodity or service and service the county, city or highway district. If the procurement is a service purchase in excess of \$100,000, do not limit the search to your highway district. Print the vendor list from the <a href="#">CMBL</a> and include it in the procurement file.
6	With written approval from your agency head or designee provided in the agency's Procurement Plan, non-CMBL vendors (including HUBS) may be added to the final vendor list to enhance competition. If applicable, also attempt to solicit a response from the vendor that last held the contract for the required good or service.
7	Print the CMBL vendor list including the approved supplemented vendors to include in the procurement file.
8	Solicit a response for the required commodity or service from each vendor identified in the previous steps. If applicable, also attempt to solicit a response from the vendor that last held the contract for the required commodity or service. The acceptable methods for receiving responses to formal solicitations (greater than \$25,000) are

	<ul style="list-style-type: none"> <li>• direct mail</li> <li>• facsimile transmission</li> <li>• electronic mail</li> </ul>
9	<p>Response Due Date and Release of Respondent Information:</p> <ul style="list-style-type: none"> <li>• For the <b>Invitation for Bid</b> process, a public opening is typically conducted announcing the respondents and pricing. If a public opening is not in the best interest of the solicitation, the solicitation documentation should state that there will be no release of information until after award.</li> <li>• For the <b>Requests for Proposal</b> process, there should not be a public reading of the respondents in order to protect negotiations and to comply with statutory requirements. (Texas Government Code §§ 2156.123 – 2156.124)</li> </ul>
10	Collect the responses. Proposed prices are considered firm for acceptance for 30 days or the number of days from the response due date indicated in the solicitation.
11	<p>Tabulate the responses and select the vendor who provides best value to the state. Include the following information in your tabulation:</p> <ul style="list-style-type: none"> <li>• CMBL vendors contacted, including those supplemented.</li> <li>• Corresponding response amounts</li> <li>• For HUBs, the ethnicity/gender of the TPASS Certified HUB</li> <li>• Awarded vendor</li> <li>• Statement of reasons for non-awards</li> </ul>
12	Keep a record of all responses. Make tabulations available for public inspection and retain the tabulation for inspection by any auditor.
13	Process the award through issuance of a PO and obtain the authorized signature of your agency's purchasing director or designee as reflected in your agency's Procurement Plan.

## TPASS Administered Open Market Solicitations

STEP	PROCEDURE
1	<p>The agency will complete an <a href="#">Open Market Requisition Form</a> located in the <a href="#">Procurement Forms Library</a>. Complete the form, provide authorized signature and forward to TPASS at <a href="mailto:open.market@cpa.state.tx.us">open.market@cpa.state.tx.us</a> Attach to the e-mail the specifications in Word format along with any other applicable attachments.</p>
2	If a review of the responses is required before award, include that request on the Open Market Requisition.
3	The TPASS Technical Team Lead reviews the requisition and assigns the procurement to a purchaser. The purchaser will coordinate changes to the specifications and requirements with the agency contact provided on the requisition.
4	If the <a href="#">Open Market Requisition</a> is for a service with an estimated value over \$100,000, the solicitation documentation must be submitted through the CATRAD system for delegation review. Upon receipt of the delegation letter with recommendations the



	<p>agency may proceed with the procurement process for the service using the <b>Open Market Formal Solicitation Process</b>. The procurement file must contain the delegation documentation for audit purposes.</p> <p>Information regarding CATRAD may be accessed at:  <a href="http://www.cpa.state.tx.us/procurement/res/CAT/catrad/">http://www.cpa.state.tx.us/procurement/res/CAT/catrad/</a></p>
5	<p>The TPASS Purchaser will process a Request for Proposal for the commodity(ies) and post the solicitation to the <b>ESBD</b>. Notification of the posting will be sent by e-mail to the contact provided on the requisition. It is recommended that the posted documents be reviewed promptly, with corrections submitted to the TPASS Purchaser in writing. These corrections will be integrated into an addendum which will be posted on the ESBD.</p>
6	TPASS receives all responses.
7	TPASS support staff uploads the responses in the PeopleSoft system for tabulation.
8	<p>If the agency has requested to review the responses, the TPASS Purchaser:</p> <ul style="list-style-type: none"> <li>• Completes and forwards a Referral Letter, reflecting the TPASS recommendation for award and fund inquiries, if applicable.</li> <li>• Included with the letter will be: <ul style="list-style-type: none"> <li>a. A copy of the tabulation without pricing</li> <li>b. A copy of the respondent's specifications for verification by agency</li> <li>c. Indication if the proposed total pricing exceeds the agency estimate by 10% and request approval for the excess funding.</li> </ul> </li> <li>• If the respondent the agency would select according to statutory interpretation of best value criteria is different from TPASS's best value recommendation for award, justification must be included with the response to the Referral Letter. TPASS shall consider, but is not bound by, an agency's recommendation in making the award.</li> </ul>
9	<p>Agency returns the signed referral letter, with justification if recommendation for award is different than TPASS and if applicable, with approval for any excess funding.</p> <p><b>Note:</b> If the funding cannot be approved, the solicitation will be cancelled without award.</p>
10	TPASS Purchaser issues a Notice of Award
11	<p>TPASS sends a copy of the Notice of Award to the agency and to the contractor.</p> <p><b>If for a One-Time Buy:</b> The agency will issue an internal purchase order to the contractor upon receipt of the Notice of Award</p> <p><b>If for addition to a TxSmartBuy contract:</b> The TPASS purchaser will have the items uploaded into the system and will notify the agency upon completion.</p> <p><b>If for addition to a Managed contract:</b> The TPASS purchaser will have the contract placed on the Managed contracting listing on the Web site and forward notice to the agency. The agency will process an internal purchase order to the contractor.</p>

## Section 2.8

# Scheduled Managed Contracts

### Introduction

A Scheduled Managed Contract is used for bulk commodities procurements (Texas Government Code Chapter 2155.064

The Contract must be:

- a high-volume purchase;
- for a definite, known quantity of a commodity;
- delivered on a definite, known schedule.

Examples of Scheduled (Managed) Contracts are:

Commodity	NIGP Class
Bread & Pastry	375
School Bread & Pastry	375
TDCJ Bread & Pastry	375
Dairy/Ice Cream	380
School Dairy/Ice Cream	380
TDCJ Dairy	380

### Procedures

Request to participate in a Scheduled Managed Contract by notifying TPASS Purchasing Operations at [open.market@TPASS.state.tx.us](mailto:open.market@TPASS.state.tx.us). TPASS Purchasing Operations will evaluate the requirement and notify the agency if it is appropriate for a new Scheduled Managed Contract or to be added to an existing contract. If the purchase is not appropriate for a Scheduled Purchase Contract, TPASS will recommend a procurement method and award to meet the needs of the request.

STEP	PROCEDURE
1	TPASS notifies participating agencies by providing a requisition approximately six months in advance.
2	The completed requisition reflecting the items and estimated annual quantities is submitted to TPASS Purchasing Operations by the deadline listed on the requisition.
3	TPASS will: <ul style="list-style-type: none"><li>• Consolidate the requisitions</li><li>• Develop the Request for Proposal (RFP)</li></ul>

	<ul style="list-style-type: none"> <li>• Post the RFP on the ESBD</li> <li>• Collect the responses</li> <li>• Evaluate for best value and process awards</li> </ul>
4	TPASS will provide each participating agency with a copy of the Notice of Award with awarded items and pricing.
5	The Scheduled (Managed) Contract will be posted to the TPASS Web page under the State Managed Contract listing.

## 2.8.1

# Texas Multiple Award Schedule Contracts PCC X

## Introduction

The Texas Multiple Award Schedule (TXMAS) Program adapts existing competitively awarded government contracts to the procurement needs of the state of Texas. Unlike some other purchasing methods, purchases made from TXMAS contracts do not require delegated authority from TPASS to make purchases over \$25,000 for commodities and \$100,000 for services. To be considered for the TXMAS Program, an existing contract must be:

- Awarded by the federal government or any other governmental entity in any state.
- Awarded using a competitive process.
- Adaptable to the laws of the state of Texas

Each TXMAS contractor is required to provide a TXMAS product catalog. Catalogs must contain the following information:

- Item specifications.
- Ordering procedures.
- Invoicing procedures.
- Contact information for making purchases and for customer service.

Terms and Conditions: If any information is needed in reference to the Terms and Conditions, please contact the contract holder or the TXMAS Coordinator at (512) 463-3421.

TXMAS contractor catalogs are available on the [TXMAS Contracts By Schedule](#).

## General Services Administration Federal Supply Service Contracts

The vast majority of TXMAS contracts are adapted from General Services Administration Federal Supply Service (GSA) contracts. For this reason, it is common for a contractor's TXMAS catalog to be nearly identical to its GSA catalog. For contracts adapted from GSA contracts, the TXMAS prices must be identical to those on the GSA Schedule. These are the "Most Favored Customer" (MFC) prices and are the maximum prices allowed. To learn about negotiating lower prices for TXMAS contract items, please see the section entitled "**Negotiating Price with TXMAS Vendors**" below.

## **Purchasing from TXMAS Contracts**

Prior to purchasing the product or service from a TXMAS contract, follow applicable statutes, as required, for purchasing from the CCG, TIBH, TCI, the TxSmartBuy term or Managed term contracts.

To purchase outside an established TPASS term contract, conduct a search of all TPASS term and TXMAS contracts for the product or service required. It is recommended that a comparison be conducted between the contracts for best value and be based upon the exact product's functional specifications or service requirements.

### **Purchase Orders against TXMAS Contracts must be entered through the TxSmartBuy on-line ordering system.**

#### **Best Value Comparison Documentation:**

Price cannot be a factor to *not* purchase TIBH products. If the product desired is available through TIBH, the purchase order must be issued through the TxSmartBuy ordering system. Products available from TCI should be purchased when meeting the functional specifications of the required product. Purchases for services or products available through CCG contracts must be processed through those contracts.

1. For products or services other than those available through CCG, TIBH or TCI, record the following information in the procurement file:
  - a. Description of the product or service
  - b. TPASS term contract number(s) and the TXMAS contract number(s) searched.  
NOTE: If searching a new TXMAS contractor that does not have a listing or link to their catalog on the [TXMAS Contracts Web Page](#), request a catalog from that contractor with a copy of their TXMAS award notice.
  - c. Product manufacturer/brand and model/product number
  - d. Pricing printed from the TPASS Term Contracts including any additional charges as applicable (freight, inside delivery).
  - e. Include pricing from TXMAS contractors that provide the product or service from the on-line catalogs or quotations. If the quoted price is less than the price listed in the contractor's TXMAS on-line catalog, make note that the lower pricing was confirmed and list the representative's name. If the quoted price is higher than the price listed on the contractor's TXMAS on-line catalog, request that the contractor provide a new quote with the published price.

#### **Issuing the Best Value Purchase Order**

- Document the basis for the best value determination in the procurement file.
- If the TPASS term contract(s) provide the best value, the purchase order must be processed through the TxSmartBuy ordering system, or if available from a Managed Term Contract, issue an internal purchase order directly to the contractor.

- If the TXMAS contract provides the best value, issue a purchase order to the contractor through the TxSmartBuy ordering system or, if to a contractor's dealer, issue an internal purchase order directly to the dealer. The dealer must be listed on the TXMAS contractor's contract page. A TXMAS contractor is not required to accept orders below the minimum order limit shown on its contract page. Orders between the minimum and maximum order limits listed on the contract page are subject to TXMAS catalog pricing. For orders above the maximum limit, you are entitled to negotiate lower prices than those listed in the TXMAS catalog.

## **TXMAS Purchases for Products or Services *NOT* Available through TPASS established contracts:**

### **TXMAS Procurements of \$5,000 and Below**

- Prior to purchasing the product or service from a TXMAS contract, follow applicable statutes, as required, for purchasing from the TIBH, TCI, the TxSmartBuy term or Managed term contracts. See Section 2.5, "Set-aside Purchases."
- Agencies are required to obtain the "best value" for expenditures of agency funds by obtaining multiple quotes (at least three) where possible and document their efforts in the procurement file. The quotes may be obtained via telephone or by electronic transmission
- The agency shall issue a purchase order to the selected "best value" TXMAS contractor through the TxSmartBuy ordering system or, for contractor's dealers, issue an internal purchase order using internal agency procedures and policies for purchases of \$5,000 and below.

### **TXMAS Procurements over \$5,000**

- Prior to purchasing the product or service from a TXMAS contract, follow applicable statutes, as required, for purchasing from the CCG, TIBH, TCI, the TxSmartBuy term or Managed term contracts. See Section 2.5, "Set-aside Purchases."
- Research the on-line catalog pricing and/or obtain a price quote from as many TXMAS contractors as necessary to provide best value to the state. Document all price quotes in the procurement file. If the TXMAS contractor's website is not shown on the [TXMAS Contracts Web Page](#), the contractor must include a copy of the TXMAS contract award notice with its price quote.
- For all TXMAS purchase orders that exceed \$25,000, the agency must post the Award Notice on the ESBD (Electronic State Business Daily).
- A TXMAS contractor is not required to accept orders below the minimum order limit shown on its contract page. Orders between the minimum and maximum order limits listed on the contract page are subject to TXMAS catalog pricing. For orders above the maximum limit, the purchaser is entitled to negotiate lower prices than those listed in the TXMAS catalog.

- Proprietary TXMAS procurements:

If the proprietary product or service is available through a TXMAS Contract, prepare documentation (letter or memo to the file) justifying the proprietary purchase in accordance with Government Code 2155.067 and obtain the authorized signature of the appropriate agency's personnel as identified in the agency's Procurement Plan. Retain this document in the procurement file.

- Prices for the following may be negotiated with a TXMAS contractor:
  1. Incidental, off-schedule items and services, installations, set up or inside delivery if necessary for product warranty, system integration or product completeness as required to facilitate TXMAS contract purchases.
  2. TXMAS contract goods and services that the contractor is offering through a promotional program.
  3. TXMAS contract goods and services in an amount that exceeds the contract's Maximum Order.

Incidental, off-schedule items and services, installation or inside delivery and set up, may be purchased as "best value, open market" items provided that they are necessary for product warranty, system integration or product completeness. An agency is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items and services may be added to the purchase order if they are clearly labeled as "open market, best value" items on the contractor's quote.

- Purchase orders must be processed through TxSmartBuy.
- Some TXMAS contract items are loaded into the TxSmartBuy system for purchasing directly from a contractor. Contract items can be searched and added to a shopping cart to complete the purchase order through the system.
- TXMAS contracts provide items for purchase through a quote process. These orders are processed through the system as a single line item for the total amount of the quote. The quote document can be attached to the purchase order in the system and will be sent to the contractor with the purchase order.
- Internal purchase orders following agency policies and procedures can be issued to TXMAS contractor dealers. The dealer must be listed on the TXMAS Contractor's contract page.

The dealer will process the order and is to be paid directly by the customer. These orders must contain the following documentation:

- TXMAS Contract number
- NIGP Code (Class and Item) for each purchased line item
- Agency number
- Best Value Determination
- Identification of any incidental, off-schedule items and services, installation, set up or inside delivery charges.

## **Proposing New TXMAS Contracts**

<b>IF</b>	<b>THEN</b>	<b>AND</b>
You have a requirement that could be met by a competitively awarded government contract	Verify that the requested contract is not already available as a TXMAS Contract	<ul style="list-style-type: none"><li>• Awarded by the federal government or any other state governmental entity</li><li>• Awarded using a competitive process</li><li>• Adaptable to the laws of the state of Texas</li></ul>
The potential contract meets the above criteria	contact the TXMAS Program at (512) 463-3421 to begin the process for a TXMAS contract award consideration	

Texas Government Code §§ [2155.062](#), [2155.502](#), [2155.504](#), 2155.504(b) and Local Government Code §[271.101](#)



## Section 2.9

### Request for Proposal (RFP)

In accordance with Texas Government Code § [2156.121](#), TPASS is authorized to determine whether to delegate sole oversight of the use of the Competitive Sealed Proposal or Request for Proposal (RFP) method of procurement to a state agency or to retain oversight.

An RFP is a written request for proposals for goods or services the state intends to acquire by means of the competitive sealed proposal procedure, similar to the Invitation for Bid procurement process; however, instead of competitive sealed bids, a negotiation phase is included and a best and final offer is permitted.

Specific guidelines concerning documentation, procedures, and handling requirements for using the competitive sealed proposal procedures are addressed in the TPASS [Contract Management Guide](#). Texas Government Code §§ [2156.121 - 2156.125](#), [2157.121 - 2157.125](#) and the TPASS Contract Management Guide should be reviewed before submitting an RFP to the TPASS Division.

Under most circumstances, purchases are based on competitive bids. Negotiations are not authorized when utilizing an Invitation for Bid (IFB) procurement method; however, if only one response is received, negotiations are allowed and encouraged. Negotiations of contracts are permitted and encouraged for solicitations process by an RFP.

#### Legal Sources:

[Texas Government Code §§2156.121-2156.125](#)

[Texas Government Code §§2157.121-2157.125](#)

Click on this link to view the [Contract Management Guide](#).



## Section 2.10

# Delegated Purchase Procedure and Strategic Sourcing Principles

A **delegated purchase** is a procurement in which the authority to manage the competitive process is delegated to an agency by TPASS rule or by statutory exemption. The delegated purchase procedure does not apply to mandatory state use set-aside purchasing programs or requirements that can be satisfied by other purchasing methods specifically authorized by state statutes.

Reference *Section 2.4 Selecting the Procurement Method* to determine that your agency has the authority to use the Delegated Purchase Procedure, and the [Training and Certification Requirements for Procurement Personnel](#) for certification requirements for making delegated purchases. Agencies are responsible for establishing internal policies and procedures for responding to delegated purchase complaints and protests. Reference *Section 1.3, Reports and Notifications* for information on agency procurement plans.

## **Strategic Sourcing Principles**

If your agency has been granted the delegated authority to conduct a competitive procurement, you should follow the basic strategic sourcing techniques utilized by the TPASS and Strategic Sourcing divisions to determine best value. Strategic sourcing is a data-driven, analysis-rich methodology for developing optimal sourcing solutions within an agency's delegated authority.

1. Know what you are buying: Strategic sourcing emphasizes developing a detailed knowledge base for the commodity or service being sourced and the market, and leveraging this knowledge to achieve the best value. Spend information should be collected and analyzed to develop a complete and detailed understanding of your organization's purchasing behavior and requirements.

Agencies should look to collect spend information at the most granular level. Request invoice level payables information from existing contractors when possible. This information will in turn assist in leveraging your purchasing power in future best value determinations when utilizing the sealed competitive Invitation for Bid process and for negotiations when utilizing the sealed competitive Request for Proposal process.

2. Consider the number of suppliers: Agencies should take an enterprise approach when considering their purchasing strategy. Often the pool of suppliers an agency uses for similar commodities or services can be consolidated into a single small group of contractors through awarding by categories or groups of items. Consolidating your agency's spend can lead to more competitive pricing by providing greater incentive to prospective contractors and may also help reduce some of the administrative costs associated with contract management. Tighter supplier relationships can achieve even greater improvements in cost, quality, and delivery time.

3. Leverage your purchasing volume: Agencies should attempt to utilize fact-based evaluation techniques in order to secure the absolute best value from their vendors. These types of evaluation techniques can only be accomplished through diligent up-front work that includes cost benchmarking, detailed spend analysis of historical purchasing and awareness of market dynamics. Rather than just the purchase price, award decisions should consider total cost of ownership such as procurement, training, operating, maintenance, disposal and operational costs.

### **Procedure for Delegated Purchases**

<b>STEP</b>	<b>PROCEDURE</b>
1	Verify that your agency has been delegated authority over the competitive process by TPASS or state statute. Follow the instructions in <i>Section 2.4 Selecting a Procurement Method</i> to make this determination.
2	Collect the following: <ul style="list-style-type: none"> <li>• The detailed specification for the required product or SOW for the required service. <i>See Section 2.0 Identify Needs</i> for more information on specifications.</li> <li>• A reasonable estimate of the good or service purchase price based on a market survey, catalog price comparison or previous purchase.</li> </ul> <b>NOTE:</b> the solicitation and award authority of an individual purchaser is limited to dollar amounts corresponding to his or her state purchasing certification. Refer to <a href="#">Training and Certification Requirements for Procurement Personnel</a> for specific information.
3	If the estimated purchase price is \$5,000 or less, statute does not require a competitive process. Follow your agency's internal procedures and policies for procuring commodities or services in an amount of \$5,000 or less.

If the specification or SOW is for:

<b>IF</b>	<b>Procurement Manual References</b>
Printing	Section 2.16 (Printing & Copying Services)
Internal repair	Section 2.10 (Delegated Purchase Procedure and Strategic Sourcing Principles)
A service	Section 2.10
Perishable items	Section 2.10
A publication directly from the publisher	Section 2.47 (Purchase Category Codes)
Fuel, oil or grease	Section 2.10
A distributor purchase	Section 2.10

If the specification or SOW is not covered above, follow the procedure in **Commodity Delegated Purchases** below.

## **Commodity Delegated Purchases**

A commodity purchase is a procurement of supplies, materials, or equipment and does not include the purchase of real property or services. TPASS delegates to all state agencies the authority to purchase commodities whose estimated purchase price does not exceed \$25,000.

### ***Commodity Delegated Purchase Procedure***

Follow the **Open Market Informal Solicitation** process. See *Section 2.7 Open Market Purchases* for instructions.

## **Service Delegated Purchases**

A **service** is defined as the furnishing of skilled or unskilled labor or professional work. Delegated purchases of services do not include:

- Professional and consulting services covered by the Professional Services Act as defined by Texas Government Code § 2254. See *Section 2.14 Professional and Consulting Services* for more information.
- Services of an employee of a state agency.
- Services of public utilities.

### ***Service Delegated Purchase Procedure***

If the estimated purchase price is:

Less than or equal to \$25,000	Use the Open Market Informal Solicitation Process (Section 2.7 <b><i>Open Market Purchases</i></b> )
Greater than \$25,000 and less than or equal to \$100,000	<ul style="list-style-type: none"><li>• Develop the appropriate formal solicitation documents.</li><li>• Post the solicitation notice and documentation to the ESBD.</li><li>• Notify all vendors listed on the CMBL in the appropriate NIGP Class/Item codes for the service and include all that could apply.</li></ul>
Greater than \$100,000 The authority is not automatically delegated	Requires a requisition for these services according to <i>Section 2.7 Open Market Purchases, TPASS Administered Open Market Purchase</i> . After review by TPASS (CATRAD) and the process is delegated to your agency: <ul style="list-style-type: none"><li>• Include the letter with recommendations delegating procurement authority in your procurement file.</li><li>• Make any changes as recommended in the delegation letter from TPASS (CATRAD) to the advertised specifications,</li></ul>

	<p>terms, and conditions. Document the reason a change was not implemented.</p> <ul style="list-style-type: none"> <li>• Develop the appropriate formal solicitation documents.</li> <li>• Post the solicitation notice and documentation to the ESBD.</li> <li>• Notify all vendors listed on the CMBL in the appropriate NIGP Class/Item codes for the service and include all codes that could apply</li> </ul>
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### **Perishable Goods Purchases (PCC L)**

Perishable goods are goods that are subject to spoilage within a relatively short time. TPASS has delegated authority to state agencies to purchase perishable goods. Perishable goods include, but are not limited to:

<b>Description</b>	<b>NIGP Class-Item</b>
Eggs, Fresh	390-21
Fruits, Fresh	390-28
Ice	390-35
Ice, Dry	390-42
Meat: Cured, Fresh, Frozen	390-49
Poultry, Dressed, Fresh	390-63
Seafood, Fresh	390-70
Shellfish, Fresh	390-72
Tamales, Fresh	390-77
Tortillas, Fresh	375-60
Vegetables, Fresh	390-84

### ***Perishable Goods Purchase Procedure***

1. If the estimated purchase price is greater than \$25,000 go to Step 3.
2. Purchase the item using the Open Market Informal Solicitation Process. See *Section 2.7 Open Market Purchases* for more information on this process.
3. Post the solicitation notice and documentation to the ESBD.
4. Notify all vendors listed on the CMBL in the appropriate NIGP Class/Item codes for the commodity.

## **Direct Publication Purchases (PCC K)**

Direct publications are publications only available from a single source. Any publication that could be purchased using a competitive process is not considered a direct publication. For example, publications available through subscription services are not direct publications.

- Examples of commodities or services only available Directly from the Publisher
- , not limited to Subscriptions
- Foreign publications
- Back issues of magazines, journals, and newspapers
- Publications produced by professional societies
- Audio, visual or audiovisual materials (films, audio presentations, etc.)
- Computer software and software maintenance
- Electronic data services (not to be confused with internet service providers such as Earthlink or America On-line, which are not direct publications)
- Collections of any of the foregoing items, including microfilm or microfiche copies of a collection:
  - Library of Congress cards.
  - Theses, dissertations, research findings and academic publications.

### ***Direct Publication Purchase Procedure***

<b>STEP</b>	<b>PROCEDURE</b>
1	If the estimated purchase price is greater than \$25,000, post the solicitation notice and documentation to the ESBD.
2	Include a signed document in the procurement file containing the following declaration: " <b>Not available from any other source.</b> " Acceptable documents include but are not limited to: <ul style="list-style-type: none"><li>• A signed memorandum with the above statement.</li><li>• The signed PO with the above statement.</li></ul>
3	Purchase the publication directly from the sole vendor that publishes it.

## **Fuel, Oil, and Grease Purchases (PCC P)**

Fuel, oil, and lubricants/grease purchases include gasoline, diesel fuel, kerosene, aviation fuels, transmission fluids, motor oil and other lubricants, liquefied petroleum gas (LPG), and compressed natural gas (CNG). These commodities may be purchased in either bulk or packaged form.

### ***Lubricants***

The solicitation and award of lubricants should be based on firm-fixed prices or a discount from a manufacturer's published list price.

## ***Indexed Fuel Pricing***

Because fuel prices fluctuate, agencies should construct bulk fuel solicitations using indexed pricing based on the contractor's terminal price. The **posted terminal price** is the contractor's cost per gallon for the fuel from the refiner's depot. The posted terminal price for a contract may be either:

- The contractor's actual cost, as shown on fuel receipts.
- A standard industry quote such as Oil Price Information Service (OPIS).
- Data Transmission Network (DTNrgy).
- A current index price from [The Federal Department of Energy, Energy Information Administration](#).

The **contractor's constant** is the difference between the posted terminal price per gallon and the selling price per gallon. The constant includes applicable taxes, environmental fees, freight charges, load fees, operational overhead, and contractor's profit margin. In your terms and conditions, prohibit contractors from changing the constant during the term of the contract. To get the actual cost of the fuel, add the contractor's constant price to the terminal price:

**Example:**      \$1.10/gallon Posted Terminal Price

                 + \$0.24/gallon Contractors Constant

                 \$1.34/gallon Selling price

## ***Fuel, Oil, and Grease Purchase Procedure***

1. If the specification and requirement is for:

- a. **Service station point of sale transactions** (amounts of fuel, oil or grease required for continued operation of a motor vehicle such as pump-delivered gasoline, pump-delivered diesel fuel, and less than case lots of oil or other fluids), purchase using a CCG Retail Fuel Card issued through the current CCG contract. In USAS, code the payment as document type 9 and reference the current CCG contract number.

The CCG Fuel Card contract can be found on the TPASS Web page under the Managed Contract Tab listed as 946-35; click on the *Details* for further information: <http://www.cpa.state.tx.us/procurement/contracts/gci/946-35.php>

For alternative vehicle fuels, consider using the current TPASS Managed Term Contract for [Retail Purchase of Alternative Fuel \(LPG\) and \(CNG\)](#). The contract is a retail point of sale provided for convenience and its use is not mandatory. The current contract will be listed on the TPASS Web page under the Managed contracts tab by NIGP Class 405.



- b. For bulk fuel, an open market solicitation or blanket purchase order should include the following information:
  - The term of the contract, including beginning and ending dates.
  - Estimated total quantities to be purchased during the contract term.
  - Estimated frequency and quantity for each delivery.
  - The delivery destination or destinations.
  - Storage capacity of the agency's tank or tanks
  - Any requirements for contractor-provided storage tanks.
  - A statement that the state is exempt from federal fuels excise tax.
2. For estimated annual purchases between \$5,000 and \$25,000, process the solicitation for the fuel using the Open Market Informal Solicitation Process. See *Section 2.7 Open Market Purchases, Open Market Informal Solicitation*.
3. If estimated annual purchases are greater than \$25,000, develop and post the solicitation documentation to the ESBD.
4. Notify all vendors from the CMBL listing utilizing the appropriate NIGP Class and Items, process and award using the appropriate formal competitive process.

### **Distributor Purchases (PCC M)**

A **distributor purchase** is the purchase of repair parts for a unit of major equipment that is needed immediately, or a maintenance contract for laboratory/medical equipment.

Examples of major equipment include, but are not limited to, the following:

- Motor vehicles
- Farm tractors and equipment
- Road building machinery and equipment
- Heavy construction machinery and equipment
- Traffic signal lights or traffic signal controller equipment
- Intelligent Transportation Systems (ITS)
- Laboratory or medical equipment
- Industrial manufacturing machinery

Repair parts do not include complete components such as engines, transmissions, compressors, etc. Parts purchased on a distributor purchase order can only be purchased from a dealer or distributor of the unit being repaired. However, when a unit of equipment has a major component made by another manufacturer, such as a Ford truck using a Caterpillar engine, the component repair parts can be purchased from a dealer or distributor of the component being repaired. Verify that the installation of distributor parts will not void the equipment's warranty before proceeding with this type of procurement.

The following items are not distributor purchases:

- Parts available through TPASS Term Contract(s)
- Consumable items such as brake pads, air filters, etc.
- Labor of any kind.
- Non-Original Equipment Manufacturer (OEM) parts, i.e. after market items.
- Major component replacements.
- Parts for stock.
- Electrical parts for electric motors, electrical switch panel boards, or electrical accessories, etc.

### **Purchase Procedure for Distributor Purchases**

1. If the distributor part is only available from one source, use the proprietary purchase method to purchase the part. See Section 2.15 Proprietary Purchases.
2. If the estimated purchase price is greater than \$25,000, use the formal competitive process, post the solicitation on the ESBD and process the award as appropriate.
3. If the estimated purchase price is greater than \$5,000 and up to \$25,000, purchase the item using the Open Market Informal Solicitation Process. See *Section 2.7 Open Market Purchases, Open Market Informal Solicitation*.
4. If multiple dealers are available, soliciting vendors and awarding through a formal competitive process is strongly encouraged.

### **Internal Repair Purchases**

An internal repair is a repair to state-owned equipment that cannot be reasonably defined prior to the actual repair and the extent of the repair needed cannot be determined until the equipment is disassembled. Internal repairs are usually the result of an unexpected, basic service outage. For example, the unexpected failure of a building's air conditioner may result in unanticipated repair to electrical circuitry, which would constitute an internal repair. Internal repairs must include labor and may include parts.

### **Internal Repair Purchase Procedure**

STEP	PROCEDURE
1	Document your procurement as an "Internal Repair."
2	To limit agency liability, include the following on the purchase order: "Not to exceed { <i>insert reasonable dollar limit</i> } for repair services unless prior authorization is provided by the agency."
3	If the estimated purchase price is greater than \$25,000, post the solicitation and award information to the ESBD.
4	Competitive award is not required for an internal repair. Follow your agency's procedures for procuring an internal repair.

## **Summary of Minimum Requirements**

## for Delegated Purchases

	<b>Total Amount of Purchase Order</b>	<b>Commodity Purchases</b>	<b>Purchases of Services</b>	<b>Direct Publication Purchases</b>	<b>Perishable Goods Purchases</b>	<b>Distributor Purchases</b>	<b>Fuel, Oil and Grease Purchases</b>	<b>Emergency Purchases</b>
	\$0.00 to \$5,000.00	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E
<b>COMPETITIVE</b>	\$5,000.01 to \$25,000.00	Open Market Informal Solicitation PCC F	Open Market Informal Solicitation PCC Q	Direct Publication Declaration with "Not Available from any other source" Documentation PCC K	Open Market Informal Solicitation PCC L	Open Market Informal Solicitation if Multiple Dealers Available PCC M	Open Market Informal Solicitation PCC P	Open Market Informal Solicitation PCC-Q
	\$25,000.01 to \$100,000.00	Non-delegated	Open Market Formal Solicitation PCC S	Direct Publication Declaration with "Not Available from any other source" Documentation PCC K	Open Market Formal Solicitation PCC L	Open Market Formal Solicitation Encouraged if Multiple Dealers Available PCC M	Open Market Formal Solicitation PCC P	Open Market Formal Solicitation When Possible PCC T
	Over \$100,000.00	Non-delegated	May or May Not be Delegated with CATRAD Review PCC S	Direct Publication Declaration with "Not Available from any other source" Documentation PCC K	Open Market Formal Solicitation PCC L	Open Market Formal Solicitation Encouraged if Multiple Dealers Available PCC M	Open Market Formal Solicitation PCC P	Open Market Formal Solicitation When Possible PCC T

### **Legal references:**

Texas Government Code §§2155.083, 2155.131, 2155.321(3)  
34 Texas Administrative Code 20.32, 20.41, 20.209

## Section 2.11

# **Purchase of Automated Information Systems/Telecommunication Commodities and Services PCCs D and I**

Automated information system (AIS)/telecommunication commodities and services include:

1. computers and computer devices on which an information system is automated, including computers and computer devices that TPASS identifies in guidelines developed by TPASS in consultation with DIR and in accordance with Texas Government Code Chapter 2054 and rules adopted under that chapter;
2. a service related to the automation of an information system, including computer software or computers;
3. a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and all other telecommunications services.

Texas Government Code §2157.001 and §2155.068

Save time and money on technology purchasing. DIR has more than 750 contracts in place - all competitively bid per Texas state requirements. Search the contracts at:

<http://www2.dir.state.tx.us/ict/Pages/contracts.aspx>

### ***Request for Offers (RFO)***

As authorized under House Bill 2918 and House Bill 3560, 80<sup>th</sup> Legislature, 2007, the RFO method is established by the Comptroller's office by rule effective September 1, 2007 (34 Tex Admin Code §20.391). By definition under this rule, RFOs are open and competitive.

The Request for Offers (RFO) purchasing method is intended as the designated, primary purchasing method for procuring automated information systems/telecommunications commodities and services other than those under the Department of Information Resources' (DIR) IT commodity purchasing program. However, state agencies, institutions of higher education, or local governments may choose to use the RFO purchasing method described below or any other purchasing method authorized by Texas Government Code, Title 10, Subtitle D, which will obtain best value.

The RFO method may be used in three instances under applicable law if:

1. The IT commodity or service is unavailable under DIR's IT commodity purchasing program;
2. The agency has obtained an exemption from DIR or approval from the Legislative Budget Board under Texas Government Code §2157.063(i); or
3. The agency is otherwise exempt from Texas Government Code §2157.068.

### ***RFO Procedures***

RFO purchasing procedures follow the procedures listed in Section 2.24 (*Centralized Master Bidders List*) for solicitation and award.

RFO solicitations with a value exceeding \$1,000,000 or more must be submitted to TPASS CATRAD for a CAT delegation review.

### **IT Commodity Purchasing Process and Exemption Guidelines through DIR ICT Cooperative Contracts:**

1. **Search by IT commodity code:** To search for IT commodity items, use the IT commodity code search tool available on the Products and Services Search page. If an IT commodity code is on the DIR IT Commodity List, a state agency must purchase the item through a DIR contract or must request and be granted an exemption before procuring the item through an avenue other than a DIR contract.
2. **Review Blanket Exemptions:** Under certain circumstances, DIR may determine that it is reasonable to grant a blanket exemption to all state agencies. Before requesting an exemption, a state agency should review the list of current blanket exemptions to determine if there is a blanket exemption that applies to the IT commodity to be procured.  
If a state agency decides to proceed with its IT commodity procurement under a blanket exemption, the procurement must be made in accordance with the exact scope, terms, and requirements specified in the IT Commodity Blanket Exemptions.
3. **Submit a One-Time Exemption Request form:** If a blanket exemption does not exist, or if the scope, terms, and requirements of an existing blanket exemption do not meet the state agency's needs, then the state agency must request a one-time exemption by completing and submitting an Exemption Request form. To download form and review evaluation procedures, click here.

### ***Proprietary Purchases of IT Commodities and Services***

See section 2.15 for the proprietary purchasing procedure. In addition to following the proprietary purchasing procedure in Section 2.15, entities must follow the guidelines listed below.

If the procuring entity believes that the good or service may be propriety to one vendor, then that entity shall include the following statement in bold and prominent type at the beginning of the RFO:

***“The issuing office believes that the requested items in this request for offers may be proprietary to one vendor under Texas Government Code § 2155.067; however the issuing office strongly encourages offers from all qualified respondents that may be able to provide the requested items.”***

## **Section 2.12**

### **Emergency Purchases PCCs D, E, F, Q, S and T**

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practices is impractical or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file in accordance with this section.

Under most circumstances, purchases are based on competitive bids. Negotiations are not authorized when utilizing an Invitation for Bid (IFB) procurement method; however, if only one response is received, negotiations are allowed and encouraged. Negotiations of contracts are encouraged for emergency purchases when soliciting is not practical

Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

#### **Agency Responsibility**

TPASS has delegated to all state agencies the authority to make emergency purchases. The decision to declare an emergency purchase is the sole responsibility of the agency.

Notwithstanding this delegation, emergency procurements are subject to TPASS's rules and procedures. TPASS authority does not extend to purchases made under the Texas Disaster Act of 1975.

Upon request, TPASS will assist in advising agencies on the proper procedures for emergency purchases, but will not certify the existence of an emergency.

#### **Solicitation Procedures**

- At least three informal bids are encouraged whenever possible on all emergency purchases. An award should be made based on best value, considering the type of emergency. An agency is responsible for handling any complaints or protests that result from emergency procurements. See Section 2.10 Delegated Purchase Procedure and Strategic Sourcing Principles.
- Emergency purchases over \$25,000.00 must be posted in the Electronic State Business Daily (ESBD) but the minimum posting requirements do not apply. Posting of the

advertisement and/or the award notice satisfies this requirement. These posting requirements are in addition to existing TPASS procedures governing emergency procurement requirements (34 Texas Administrative Code 20.208, relating to Delegated Purchases).

### **Justification Requirements**

Emergency purchases require a letter of justification signed by the purchasing director or an authorized representative as provided in the agency Procurement Plan, documenting the emergency and at a minimum addressing the following:

- The nature of the emergency such as hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state, and what caused the emergency situation; and
- The estimated impact or damage, financial or otherwise, that will occur by following normal procurement practices (general statements of loss or nominal damage are not acceptable).

### **Audit Requirements**

Emergency purchases of goods and services over \$25,000 may be audited by TPASS and should be coded as **document type 3, Purchase Category Code (PCC) T. .**

TPASS strongly suggests that all agencies use the TPASS terms and conditions, including bidder affirmations, for emergency procurements regardless of the dollar amount. If the informal bid process is utilized, the terms and conditions may be included by reference as part of the purchase order.

TPASS Authority does not extend to purchases made under the Texas Disaster Act of 1975; Texas Government Code 418

For additional information, see Sections 3.0 *General Audit Procedures*, 3.1 *Purchase/Procurement Audits*, and 3.2 *Post- Payment Audits*.

### **Legal Authority:**

Texas Government Code Chapter 418 and §2155.137  
34 Texas Administrative Code §20.41

## Section 2.13

### **Research Purchases PCC - R**

Upon written request, TPASS may delegate to institutions of higher education the authority to purchase supplies, materials, services or equipment for research projects from state funds appropriated for that purpose. The written request for delegation of research purchasing authority must be made to the Director of Procurement. Please contact the Texas Procurement and Support Services, for a list of institutions of higher education that have requested and been granted this delegation.

An institution of higher education that has been granted delegated authority for research purchases shall follow the TPASS monetary limits and purchasing procedures regarding competitive bidding in making these types of purchases. When making these purchases, the institution of higher education may consider other factors, including quality, reliability, expected life span, and compatibility with existing equipment.

The following declaration must be on the purchase document:

**"This purchase complies with the statutes and all rules and procedures pertaining to the delegation of research purchasing authority."**

The appropriate delegated solicitation procedure is determined by the dollar amount of the purchase in question (see matrix in Section 2.10 Delegated Purchase Procedure and Strategic Sourcing Principles). The institution of higher education will have the responsibility for handling complaints and protests. Purchases will be made in accordance with Texas statutes, TPASS rules and procedures, except there is no upper dollar limit.

All research purchases made through the research delegated authority over \$25,000 may be audited by TPASS.

## Section 2.14

### **Professional & Consulting Services**

Texas Government Code § 2254 specifically empowers governmental entities to purchase professional services and consulting services. These procurements are exempt from TPASS review authority. Each agency is responsible for following procurement requirements and resolving any complaints or protests. TPASS recommends that agencies consult their own legal counsel for guidance in procuring professional or consulting services. For additional detailed information, review the applicable statutes and the [State of Texas Purchase Policies and](#)



[Procedures Guide](#) published by TPASS.

### **Professional Services**

Professional services must be within the scope of practice as defined by Texas Government Code § 2254.002 or provided in connection with the professional employment or practice of a person who is licensed or registered as:

- Accounting - a certified public accountant (CPA);
- Architecture - an architect;
- Landscape Architect;
- Land Surveying - a land surveyor;
- Medicine - a physician, including a surgeon;
- Optometry - an optometrist;
- Professional Engineering - a professional engineer;
- Real Estate Appraising - a state certified/licensed real estate appraiser; or
- Professional Nursing - registered nurse.

For information on purchasing services provided by private legal counsel, contact the Office of the Attorney General. The procurement of private legal counsel requires the approval of the Office of the Attorney General.

### **Contract Notification**

Pursuant to Texas Government Code §§ 2254.006 and 2254.0301, a state agency, including an institution of higher education as defined by Texas Education Code § 61.003, shall provide written notice to the Legislative Budget Board (LBB) of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including any amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract.

### **Consultant Services**

Texas Government Code defines a consultant service as the human service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. An agency may contract with a private consultant only if:

- there is a substantial need for the service; and
- the agency cannot adequately perform the service with its own personnel or through another agency.

If the consulting service is reasonably foreseen to exceed \$15,000 during the term of the contract, the agency shall submit a notice of intent to the LBB and the Governor's Budget and Planning Office to obtain a finding from the Governor's office that the services are necessary. Thirty days before entering into such a contract, an invitation for offers from consultants must be published in the Texas Register. These requirements do not apply to the acquisition of services such as those provided by private legal counsel, investment counselors, actuaries, medical or dental services, and professional services listed under the Professional Services Procurement

Act. Not later than the 20th day after entering into a consulting services contract with a value expected to exceed \$15,000, or \$25,000 for an institution of higher education, a description of the services, the name, and value of the contract must be published in the Texas Register.

**Note:** If the professional or consulting service contract is anticipated to exceed \$25,000, a notice or the entire solicitation must also be posted on the Electronic State Business Daily.

### **Consulting Services Relating to DIR Commodities**

The following commodity class and item codes are identified as DIR commodity procurements:

- Class 918-28 Computer Hardware Consulting;
- Class 918-29 Computer Software Consulting;
- Class 918-30 Computer Network Consulting;
- Class 918-46 Feasibility Studies;
- Class 918-90 Strategic Technology Planning and Consulting Services; and
- Class 918-95 Telecommunications Consulting.

New commodity classes and items may be added by TPASS as they are identified. Check the TPASS Web site for a current listing of applicable class and item codes.

### **Legal Authority:**

Texas Government Code §2254.001, 2254.021 and 2155.083

## **Section 2.15**

### **Proprietary Purchases**

A **proprietary** product is one where the specifications or conditions of the proposed purchase allow only one product to be supplied, and preclude any other product or supplier from meeting the specifications. When the specification limits consideration to one product or supplier, you must include a written **Proprietary Purchase Justification** in the procurement file.

Proprietary justification is not needed for purchases of \$5,000 or less. If the estimated purchase price is \$5,000 or less, there are no special requirements for a proprietary purchase. Follow the instructions in Section 2.4, Selecting a Procurement Method.

### **Proprietary Procurement Procedure**

Proprietary purchases may be considered as sole source or competitive.

**Sole Source:** Product or service is only available for purchase through the specific identified vendor. These vendors are usually the manufacturer.

Competitive: Specific products which are available for purchase through multiple dealers or distributors for the manufacturer or owner of the services.

The memorandum to file and/or letter should include:

- The justification of the need for the proprietary specification or scope of work.
- The reason competing products or services are not suitable.
- Any other applicable information requested by TPASS to further explain the justification.

**A Proprietary Purchase Justification for procurements of:**

Commodities: \$5,000 - \$25,000

Services: \$5,000 - \$100,000

The procurement file should include a justification as a “Memorandum to File”, signed by the Agency Head or designee as provided in the Procurement Plan and include this statement:

“These specifications and/or requirements are being advertised under Section 2155.067, Texas Government Code. The procuring agency has on file an approved justification for the specifications and the reasons why competing products are not satisfactory. If a competing vendor believes it can satisfy these specifications, it should respond with its product and explain how the specifications will be adequately met.”

**A Proprietary Purchase Justification for procurements of:**

Commodities: \$25,000 or more

Include a Formal letter on Agency letterhead with the Open Market Requisition submitted to TPASS at [open.market@cpa.state.tx.us](mailto:open.market@cpa.state.tx.us)

Services: \$100,000 or more

Include a Formal Letter on Agency letterhead with the solicitation documents submitted through CATRAD for delegated review.

The formal letter should include a justification, signed by the Agency Head or designee as provided in the Procurement Plan and include this statement:

“These specifications and/or requirements are being advertised under Section 2155.067, Texas Government Code. The procuring agency has provided a letter to the Comptroller providing a justification for the specifications and the reasons why competing products are not satisfactory. If a competing vendor believes it can satisfy these specifications, it should respond with its product and explain how the specifications will be adequately met.”

Address Letter to:

Comptroller of Public Accounts  
Attn: Texas Procurement and Support Services (TPASS)  
P.O. Box 13186  
Austin, TX 78711

## **Section 2.15.1**

### **Council on Competitive Government Contracts**

By participating in a CCG awarded state service or commodity contract, a state agency or local government can save itself the time and effort required to secure a similar service on its own. State agencies and local governments automatically satisfy competitive bidding requirements when they participate in a CCG contract.

<http://www.ccg.state.tx.us/contracts/>

#### **Legal Authority**

Texas Government Code §§ 2155.067(c)(1-3) and 2155.067(b)

## **Section 2.16**

### **Printing and Copying Services**

As it applies to state purchasing, printing is a means of graphic production or reproduction of paper documents using a printing press or high volume digital printing equipment. Printing is a service that requires special treatment because there are many options for procuring print and print related services, including fulfillment and mailing services. This section provides procurement instructions and summarizes state agency printing options.

#### **Incidental Copying and Copy Centers**

Incidental copying is copying and document production within a quantity limit and job specification that does not reasonably require high-volume duplication equipment or services. It is the day-to-day production and copying of documents using available local and networked printers and office copy machines. State agencies are authorized to provide for their own incidental copying needs.

The needs of some agencies may make it necessary for them to maintain a copy center, which for the purpose of this document is a centralized location with multiple pieces of printing and reproduction equipment, typically with a dedicated staff assigned to the location and an order fulfillment process to support agency functions.

Staffing and equipment located within a copy center should be appropriate to the size, scope and mission of the agency. The purchase or lease of equipment is subject to review by the Texas Procurement and Support Services (TPASS) division of the Comptroller of Public Accounts (TPASS) and the Council on Competitive Government (CCG) not only in regard to the merit of the individual purchase, but also in the context of the entirety of equipment deployed in the copy center. Equipment typically associated with print shop operations (e.g., printing presses, folding machines, cutting machines, etc.) should not be deployed in agency copy centers.

Furthermore, agencies that maintain copy centers must meet with CCG to establish impression-per-job and/or cost-per-page guidelines that set appropriate job limits.

### **CCG Approved Print Shops**

CCG Approved Print Shops are full-service print shops that have been approved by the CCG to provide print and print-related services to state agencies. Agencies are not authorized to establish full service print shops without the approval of CCG. At present there are five State Approved Print Shops located at:

- Texas Department of Transportation
- Texas Workforce Commission
- Health and Human Services Commission
- Texas Department of Public Safety
- University of Texas at Austin

These five shops provide design, digital and traditional offset printing, binding, fulfillment, mailing, and other print related services to state agencies. For more information on the State Approved Print Shop Program see the [CCG Web site](#).

CCG Approved Print Shop responsibilities and procedures are established in an Interagency Contract (IAC) between CCG and the approved print shop. Certain exemptions to the procedures outlined below and other considerations are extended to the approved shops and their hosting agencies to ensure efficient operations. Specific exceptions and considerations are documented in the franchise agreement.

### **Texas Department of Criminal Justice (TDCJ) Print Shops**

Texas Department of Criminal Justice (TDCJ) provides printing services to public entities through three Texas Correctional Industries (TCI) print shops. One of the shops focuses on digital printing and bindery services, another on traditional offset printing and bindery services, and the third on adhesive backed products, such as stickers and decals. For more information on the specific services provided by the TCI print shops, please see the [TCI website](#).

***For the remainder of this section the reference to State Print Shops is a reference to both TCI Print Shops and CCG Approved Print Shops.***

### **State Data Center – Printing**

Effective Nov. 22, 2006, the Department of Information Resources entered into a contract with IBM to manage Data Center Services (DCS) for 27 participating Texas state agencies.

The Austin Data Center provides the infrastructure for high speed production print output and presort/barcode mail services for participating agencies. The print area can receive preauthorized print job files from DCS customers or third parties via designated file transfer methods, assign

and schedule print jobs and produce high speed print output according to preauthorized specifications.

The outbound mail area can then prepare and package print jobs for distribution according to preauthorized specifications. Delivery only (non-mail) jobs are routed to trucks for delivery according to specifications. If the distribution method of the print output is mail service utilizing the US Postal Service, the mail will be picked up by the presort contractor for presort and barcode services and delivery to the USPS.

Although agencies may wish to utilize the procedures outlined below to acquire these services from the State Print Shops, any agency receiving infrastructure services through the DCS contract may opt to leverage this infrastructure without the need to utilize the procedures outlined below.

### **Term Contracts for Print Services**

TPASS provides statewide term contracts for several print services. The contracts and services provided include:

- Printed Envelopes ([Contract 966-A1](#))
- Business Cards ([Contract 966-M1](#))
- Custom Printed Continuous Feed, Tractor Fed and Snap-Out Forms ([Contract 966-N2](#))

Although agencies may wish to utilize the procedures outlined below to acquire these services from the State Print Shops, these contracts may be used, once a waiver has been obtained from Texas Correctional Industries.

### **Procedure for Procuring Print and Print Related Services**

Print and print related service procurements exceeding \$1,000 in estimated purchase price must follow the procedures outlined below. It is a violation of this procedure to intentionally divide job requests for the purpose of avoiding these procedures. Agencies are encouraged to establish internal procurement procedures for print and print related service requests for less than \$1,000.

State agencies are encouraged to contact the Texas Procurement and Support Services Division of the Comptroller of Public Accounts, for clarification or other requests.

Agencies may determine best value for their print procurement using the following procedure:

#### **1. Identify Print Job Specifications and Estimate Purchase Price**

State agency personnel should determine their print job specifications and estimated purchase price for their print job. Estimates may be received from State Print Shops or other entities directly without utilizing this process, but estimates received will not be considered formal bids for procurement purposes.

Agencies are encouraged to establish internal procedures to aid them in accurately assessing print job specifications and estimated purchase price for print jobs.

If an agency has a recurring job to be completed on a more-or-less regular schedule, it should be considered one job for purposes of this procedure. In establishing their specifications, agencies will need to provide the print schedule for the Fiscal Year and the estimated quantity needed. If they are unsure of the exact schedule, an estimate is appropriate. Estimates should be based on historical information where available to assist the State Print Shops in their bid efforts.

## **2. Submit a Print Shop Bid Request Form**

State agency personnel should submit print job specifications using the State Print Shop Bid Request Form at <https://www.window.state.tx.us/ccg/>. The form allows state agencies to identify the specifications of their job and submit their specifications to the State Print Shops simultaneously. The State Print Shops will respond to bid requests in the specified time period if they are capable of completing the work according to identified specifications.

## **3. Evaluate Bids and Award Job – State Print Shops**

Upon receipt of bid responses from the State Print Shops, agency personnel must perform an analysis of the bids received for documentation in the procurement file. If agency personnel determine that best value would be achieved through a State Print Shop, they must submit their procurement documentation to the agency's certified procurement officer or delegated procurement authority for review and approval prior to procuring the services from the appropriate print shop.

Agency personnel must work closely with their agency's certified procurement officer or delegated procurement authority to be certain that they adequately document this process, clearly outlining what evaluation criteria were used in establishing best value. Once approval is provided, the agency should utilize the most appropriate means of procuring the service as established by the agency.

## **4. Competitive Bid/Open Market Procurement**

If agency personnel receive no responsive bids from a State Print Shop or, after the results of the bid evaluation performed in Step 3, determine, in consultation with the agency's certified procurement officer or delegated procurement authority, that best value would be achieved through a private sector vendor, the agency may perform a Competitive Bid/Open Market Purchase.

Agencies should note that procurements above \$25,000 must be sent to TPASS for review and possible delegation; those above \$100,000 must obtain Contract Advisory Team Review and Delegation (CAT-RAD) review.



When assessing bid responses for their Competitive Bid/Open Market Purchase, agencies must provide TCI a final opportunity to negotiate on price, *if they submitted a response in Step 3*. If TCI provides a final price in response to the agency request AND the agency wishes to make an alternate selection, the agency must submit to the TPASS Procurement Manager electronic copies of the bid tabulation and responses from the solicitation process for certification prior to award. Agencies should be aware that state statute requires agencies to utilize TCI if they can provide the requested service and if they submit the lowest price in a best and final request.

## **Procedure for Procuring Print and Print-Related Equipment**

The purchase or lease of print and print related equipment, whether requested by an approved print shop or not, requires the review and approval of TPASS in consultation with CCG. The purpose of the review is to limit capital purchases for high capacity print shop quality equipment to State Print Shops working to meet the needs of agencies. Should an agency require a specialized piece of print equipment, it is recommended that they contact TPASS and CCG to discuss their needs prior to proceeding with the procurement.

### **State Library Requirements**

If you are producing a state publication, you must meet State Library Deposit requirements. State publications are information, printed or otherwise, that is publicly distributed and meets certain statutory criteria. For information on State publications and deposit requirements, contact the [Texas State Publications Depository Program](#).

### **References:**

<http://www.ccg.State.tx.us/printshop.html>

Texas Government Code §§497.025, 497.025(c), 771.004, 2155.132(e)

<http://www.tsl.state.tx.us/statepubs/#contact>

Texas Constitution, Art. 16, §21

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.16.htm>

34 Texas Administrative Code §20.41

[Director of the Department of Agriculture and Environment et al. v. Printing Industries Association of Texas et al., 600 S.W.2d 264 \(Tex. 1980\)](#)

## **Section 2.17**

### **Specifications**

A specification is a description of a product or service a user seeks to procure along with a description of what a proposer must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

Specifications control:

- the quality level of the product;
- the amount of competition;
- the suitability of the product or service for the job to be done; and
- the method of evaluation used in making an award and determining the best value proposal for the purchase.

### **Characteristics of an Effective Specification:**

- **SIMPLE:** Avoid unnecessary detail, but provide sufficient information to ensure that requirements will satisfy their intended purpose.
- **CLEAR:** Use terminology that is understandable to the agency and proposers. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid “legalese” language and jargon whenever possible.
- **ACCURATE:** Use units of measure compatible with industry standards. All quantities and packing requirements should be clearly identified.
- **COMPETITIVE:** Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded "extras" that could reduce or eliminate competition and increase costs.
- **FLEXIBLE:** Avoid totally inflexible specifications which prevent the acceptance of a proposal that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, they should be within 10% unless otherwise stated in the solicitation document.

A proposer or contract participant may provide free technical assistance to an agency. A state agency may not accept a proposal or award a contract to a vendor that received compensation from the agency to participate in the preparation of the specifications or request for proposal on which the proposal or contract is based.

### **Texas Specifications**

TPASS has developed [Texas specifications](#) for a number of commodities purchased in volume by the state. These specifications are identified by a specification number and effective or revised date. Copies of Texas specifications are available from the Texas Procurement and Support Services Division and on the Web site. The specifications are listed by class and item and may be downloaded for agency use.

These specifications establish minimum standards of quality, but do not preclude the acceptance or awarding of proposals which offer better quality commodities. In completing a requisition for commodities covered by these specifications, list the specification number and a date as a reference.

### **Agency Specifications**

If no Texas specifications exist for the commodity needed, acceptable specifications covering the agency's needs must be developed. These specifications should provide a clear and accurate description of the requirements for the merchandise or service to be competitively sourced.

Specifications must be clear and understandable to the proposers and permit competition between products of equal quality.

Descriptions may include a statement regarding the qualitative nature of the purchase and should identify minimum and/or maximum essential characteristics and standards to which the purchase must conform if it is to satisfy its intended use. "Performance" requirements should be identified. "Design" or "construction" specifications may be written where minimum mandatory design characteristics are appropriate.

**TPASS Specification Library:** <http://www.window.state.tx.us/procurement/pub/specifications-library/>

## **Section 2.18**

### **Excess Obligation Prohibited**

The Texas Constitution and the General Appropriations Act prohibit a state agency from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. Therefore any installment purchase, lease purchase, lease with option to buy, equipment lease, or any other type of purchase which incurs an obligation beyond the current appropriations biennium is strictly prohibited, unless such obligation is expressly conditioned upon continued legislative appropriation.

Notwithstanding this prohibition, a state agency may incur an excess obligation if its proposed installment purchase arrangement has been certified by CPA as cost effective. General Appropriations Act, Article IX, § 6.03 (2008-2009 Biennium). However, any certification by TPASS related to obligations incurred for the purchase or lease of automated information systems equipment may only be made if the requesting agency has on file with the Legislative Budget Board a Biennial Operating Plan, including any amendments, and the plan has been approved by the Legislative Budget Board.

Requests for Certifications should be directed to CPA Fiscal Management Division. For CPA to make a certification as provided for under the General Appropriations Act, the following information must be provided with the purchase requisition and be signed by the purchasing director or other proper authority of the submitting agency:

- A statement comparing the anticipated cost savings to be realized through the present acquisition of the equipment versus the outright purchase of the equipment at a later time when adequate funds become available;
- A statement affirming that the ordering entity expects to be able to make payments beyond the current biennium without having to rely on an increased level of general revenue appropriations;
- An estimate of the total anticipated interest charges over term of the installment contract; and
- A statement indicating that the lease (or installment) purchase is the most cost effective

means of obtaining the needed equipment despite the additional interest cost to the state.

In addition to the above requirements, any purchase agreement subject to this section must contain a clause enabling the agency to cancel the agreement in the event the legislature curtails or fails to appropriate money to cover the term of the agreement to prevent any unconstitutional excess obligation. For example, "Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature."

#### **Penalty for Requisitioning Officer or Employee**

If any excess obligation is incurred that violates the General Appropriations Act or the Texas Constitution, the State Auditor shall certify the fact of the violation and the amount of over-obligation to TPASS, and TPASS shall deduct an amount or amounts equivalent to the over-obligation from the salary or other compensation due the officer or employee responsible for disbursing or requisitioning, and apply that amount to payment of the obligation. General Appropriations Act, Article IX, § 6.03 (2008-2009 Biennium); Texas Constitution, Article XVI, Section 10.

## **Section 2.19**

### **Proposer Affirmation and Required Clauses**

TPASS requires prospective proposers on any solicitation document to affirm their compliance with particular state or federal laws or TPASS rules. These affirmations, certification and clauses become part of any solicitation and are considered binding terms and conditions of any resulting contract or purchase order. Any misrepresentation or false statement that is deemed material by the state is a breach of contract, which shall void or make voidable any solicitation or resulting contract. Such proposers may be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, in addition to being barred from participating in future contracting opportunities with the State of Texas.

By signature thereon affixed, the Respondent thereby certifies that:

#### **Affirmations**

- The Respondent has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted response. Violation of this requirement may result in the termination of the Contract at the discretion of the {AGENCY}.
- The {AGENCY} is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the {AGENCY} under this Contract that constitutes a record under the Act is received by the {AGENCY}, the information must qualify for an exception provided by the Texas Public Information Act

in order to be withheld from public disclosure. The Respondent authorizes the { AGENCY } to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Respondent has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If the { AGENCY } does not have a good faith belief that information may be subject to an exception to disclosure, the { AGENCY } is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Respondent to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Respondent waives any claim against and releases from liability the { AGENCY }, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

- The Respondent shall promptly notify the { AGENCY } in the event that any representations and warranties provided in this Contract are no longer true and correct. The Respondent acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by the { AGENCY } in selecting the Respondent for the award of the Contract. Further, the Respondent warrants and represents that all of its statements and representations made to the { AGENCY } prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

### **Civil Rights**

The Respondent agrees that no person shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Respondent shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

### **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

{ AGENCY } is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (ELLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

### **Records Retention**

The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the {AGENCY} or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the {AGENCY}, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

### **Environmental Protection**

The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

### **Prohibition on Lobbying**

The Respondent shall comply with the provisions of the Lobbying Disclosure Act, 2 U.S.C. §1601 *et seq.* By submitting a Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.

### **Copyrights and Publications**

The Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (hereinafter referred to as "the works"), the Respondent may copyright the works subject to the reservation by the {AGENCY} and affected Customers of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state and/or political subdivision purposes:

- the copyright in the works developed under the Contract, and

- any rights of copyright to which the Respondent purchases ownership with funding from the Contract.

The Respondent may publish, at its expense, the results of Contract performance with prior { AGENCY } review and approval of that publication. Any publication (written, video or audio recording) shall include acknowledgment of the support received from the { AGENCY } and Customers. One (1) copy of any such publication must be provided to the { AGENCY }. The { AGENCY } reserves the right to require additional copies before or after the initial review. All copies shall be provided free of charge to the { AGENCY }.

## **Certifications**

- **Child Support Obligations**

Under §231.006, Texas Family Code, (relating to child support) the Respondent, by submitting its Proposal, certifies that it is not ineligible to receive payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

- **Texas Corporate Franchise Tax Certification**

The Respondent, by submitting its Proposal, certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

- **Certification Concerning Dealings with Public Servants**

The Respondent, by submitting its Proposal, certifies that it has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

- **Certification Concerning Financial Participation**

Pursuant to §2155.004, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

- **Certification Concerning Hurricane Relief**

Texas Government Code §§ 2155.006 and 2261.053 prohibit the { AGENCY } from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Gov't Code §418.004, occurring after September 24, 2005. Under Gov't Code §2155.006, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

### **Independent Contractor**

The Contract shall not render the Respondent an employee, officer, or agent of the { AGENCY } for any purpose. The Respondent is and shall remain an independent contractor in relation to the { AGENCY }. The { AGENCY } shall not be responsible for withholding taxes from payments made under the Contract. The Respondent shall have no claim against the { AGENCY } for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

### **No Assignment by Contractor**

The Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the { AGENCY }.

### **Indemnification and Liability**

The Respondent shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and the { AGENCY }, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of the Respondent or any agent, employee, subcontractor, or supplier of the Respondent in the execution or performance of the Contract. The Respondent shall coordinate its defense with the Texas Attorney General as requested by the { AGENCY }.

This section is not intended to and shall not be construed to require the Respondent to indemnify or hold harmless the State of Texas or the { AGENCY } for any claims or liabilities resulting from the negligent acts or omissions of the { AGENCY } or its employees.

### **Respondent Liability for Damage to Government Property**

The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the { AGENCY } Contract Manager in writing of any such damage within one (1) calendar day.

### **Force Majeure**

The { AGENCY }, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the { AGENCY }.

In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without



delay. The Respondent shall immediately notify the { AGENCY } Contract Manager by telephone (to be confirmed in writing within five (5) calendar days of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

### **Buy Texas**

In accordance with §2155.4441, Gov't Code, the Respondent shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and deliverable in a comparable period of time to products and materials produced outside Texas.

### **Miscellaneous Terms and Conditions**

- **Permits:**  
The Respondent shall be responsible, at the Respondent's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, laws, or codes that pertain to the Contract.
- **Electrical Items**  
All electrical items provided by the Respondent to the { AGENCY } or a Customer under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.
- **Executive Head**  
Pursuant to Gov't Code §669.003, the { AGENCY } may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.
- **Terminated Contracts**  
By submitting a Proposal, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify the contract and provide an explanation for the termination.

### **Non-Waiver of Rights**

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or successive breach.

## **No Waiver of Sovereign Immunity**

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the { AGENCY } or the State of Texas of any immunities from suit or from liability that the { AGENCY } or the state may have by operation of law.

## **Severability**

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

## **Applicable Law and Venue**

The Respondent agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for provisions regarding conflicts of laws. The Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the { AGENCY } under this Contract is, and that any such legal action or suit shall be, brought in a court of competent jurisdiction in Travis County, Texas.

## **Compliance with Laws; Dealing with Public Servants**

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code §36.02, which prohibits bribery; (ii) Texas Penal Code §36.09, which prohibits the offering or conferring of benefits to public servants; (iii) Gov't Code §2155.003, which prohibits the chief clerk or any other employee of the { AGENCY } from having an interest in, or in any manner being connected with, a contract or bid for a purchase of goods or services by an agency of the state, or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, { AGENCY } shall not be responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses and damages caused by, arising out of or resulting there from.

## **Insurance and Other Security**

The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. The Respondent shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall

comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an “A” rating from Best, and authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of a Customer or the {AGENCY}.

### **Deceptive Trade Practices; Unfair Business Practices**

The Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Respondent has not been found to be liable for such practices in such proceedings. The Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

### **Immigration**

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Acts of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) enacted on September 30, 1996.

### **Change Management**

The Respondent agrees that the key personnel assigned to the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Respondent unless the {AGENCY} agrees to a change in the key personnel.

### **Federal, State, and Local Requirements**

Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

## **No Liability Upon Termination**

If this Contract is terminated for any reason, { AGENCY } and the State of Texas shall not be liable to Respondent for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Respondent may be entitled to the remedies provided in Government Code Chapter 2260.

## **Felony Criminal Convictions**

Respondent represents and warrants that Respondent and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised { AGENCY } as to the facts and circumstances surrounding the conviction.

## **Drug Free Workplace**

The contractor shall comply with and implement the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.), 32 CFR Part 280, Subpart F, the Drug-Free Work Place Act of 1988, and any amendments that may hereafter be issued.

## **Vendor Performance**

In accordance with Texas Government Code §§ 2155.074 and 2155.75, vendor performance may be used as a factor in the award.

## **Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)**

(1) Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(2) Respondent shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Respondents not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

## Section 2.20

### Historically Underutilized Business Program

TPASS administers Texas' statewide Historically Underutilized Business (HUB) Program in accordance with Texas Government Code § 2161 and 34 Texas Administrative Code. HUB Program activities are designed to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the 2009 State of Texas Disparity Study. State agencies shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following percentages, per 34 Texas Administrative Code §20.13:

- 11.9% for heavy construction other than building contracts;
- 26.1% for all building construction, including general contractors and operative builders contracts;
- 57.2% for all special trade construction contracts;
- 20% for professional services contracts;
- 33% for all other services contracts; and
- 12.6% for commodities contracts.

Type of Purchase	Procedure
estimated purchases <b>up to \$5,000</b>	Competitive bids not required but purchasing from state of Texas certified HUBs encouraged.
estimated purchases of <b>\$5,000.01 to \$25,000</b>	Agencies must obtain at least 3 informal bids, 2 of which must be from state of Texas certified HUBs.
estimated purchases <b>over \$25,000</b>	Agencies must solicit bids or proposals from all eligible vendors on the Centralized Master Bidders List (CMBL) serving the agency's geographic region.

**NOTE:** An agency may supplement the CMBL with state of Texas certified HUBs at any time if it determines that it may enhance competition or increase the number of HUBs that submit bids.

#### **Historically Underutilized Business Subcontracting Plan (HSP)**

Each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. If subcontracting opportunities are probable, the soliciting agency will state such probability in its bid, proposal, offer or other applicable expression of interest (solicitation) and require the prime contractors (respondents) to complete and submit an HSP with their response. Agencies should include the HSP form as an attachment

to its solicitation. Even if the prime contractor can fulfill the entire contract work specified in the agency's solicitation, the prime contractor must complete and submit an HSP with its response.

In the event prime contractors cannot fulfill the contract with their own equipment, supplies, materials, and/or employees, the agency should instruct prime contractors to use the CMBL/HUB Search Directory (<http://www.window.state.tx.us/procurement//cmb/cmbhub.html>) to identify state of Texas certified HUBs who may be capable of performing the subcontracting opportunities identified in the contract specifications and any other subcontracting opportunities.

**Note:** TPASS does not endorse, recommend or attest to the capabilities of any company or individual listed within the CMBL/HUB Search Directory.

In accordance with 34 Texas Administrative Code §20.14, a bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan to be considered responsive. Once accepted, the HSP will become a provision of the contract.

In preparing the HSP, if the prime contractor determines that it will be subcontracting any portion of the contract work, the prime contractor must comply with provisions of 34 Texas Administrative Code §20.14 relating to developing and submitting a subcontracting plan. That section allows prime contractors to demonstrate "good faith effort" for recruiting HUB subcontractors through three methods:

1. notifying at least three state of Texas certified HUBs and two or more minority/women trade associations of the work it intends to subcontract, and providing the HUBs a reasonable time to respond to the notice. Unless circumstances require a different time period determined by the soliciting agency and documented in the agency's contract file, "**reasonable time**" in this context is at least seven (7) working days prior to the prime contractor submitting its response and HSP to the soliciting agency. The notice shall, in all instances, include a quantitative description of the subcontracting opportunities and identify the location to review plans and contract specifications, information about bonding and insurance requirements, and identify a contact person.

2. subcontracting 100% of all available opportunities to State of Texas registered HUBs;

or,

3. subcontracting with Texas HUBs in an amount equal to or greater than the identified HUB performance goal for the contract. The goal will be shown in the instructions section of the HSP. When utilizing this method, prime contractors may only claim HUBs with which the prime has had continuous contracts for five or fewer years.

If the selected respondent decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must comply with provisions of Texas Administrative Code §20.14 and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract.

Similarly, if at any time during the term of the contract, the selected respondent desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The selected respondent must comply with provisions of 34 Texas Administrative Code §20.14, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file. If the selected respondent subcontracts any of the work without prior authorization and without complying with provisions of 34 Texas Administrative Code §20.14, the selected respondent is deemed to have breached the contract and is subject to any remedial action provided by Texas Government Code § 2161, other applicable law and 34 Texas Administrative Code §20.14. The contracting agency may report nonperformance relative to its contracts to TPASS in accordance with 34 Texas Administrative Code §20.108 (Vendor Performance Tracking System) and §20.106 (Debarment).

The prime contractor shall maintain business records documenting its compliance with the approved HSP and shall submit a Progress Assessment Report (PAR) to the ordering entity monthly and in the format required by the contract documents. Documentation of the prime contractor's good faith efforts shall be maintained by the contracting agency in the contract file for determining whether the value of the subcontracts to state of Texas certified HUBs meets or exceeds the HUB subcontracting provisions specified in the contract.

Electronic copies of the HSP and PAR are available on-line at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms>.

## **Reports**

- The HUB Report includes a summary and analysis of expenditures made to Texas certified HUBs by state agencies and institutions of higher education. The report is compiled and published on a semi-annual basis. By using the HUB Report, agencies can track their expenditures and utilize the report as a bench marking tool to meet or exceed their HUB utilization goals in the six (6) procurement categories tracked (i.e., Heavy Construction, Building Construction, Special Trade Construction, Professional Services, Other Services, and Commodities Purchasing). Not only does the HUB Report capture expenditures, but it also contains Supplementary Summary Letters that identify agency Outreach and Good Faith Efforts.
- HUB Reports and reporting procedures are available on-line at <http://www.window.state.tx.us/procurement/prog/hub/hub-reporting>.
- Agencies will continually maintain and compile monthly information relating to the agency's use of Texas certified HUBs, by each operating division, including information regarding subcontractors and suppliers.

- Agencies must refer to the TPASS's CMBL/HUB Search Directory at <http://www.window.state.tx.us/procurement//cmb/cmbhub.html> to locate state of Texas certified HUBs. If an agency is unable to locate a Texas certified HUB from the CMBL/HUB Search Directory, the agency must make a written notation in the procurement file of all the reference sources used for the purchase.

For further information on HUB Certification, Compliance and HSP, call 1-888-863-5881.



## Section 2.21

### Surety Bonds

Since each ordering entity is responsible for determining its own needs, an ordering entity may require the successful bidder to post a bond to ensure the bidder's performance of its obligations under the contract. TPASS discourages the use of performance bonds on open market or delegated purchases unless there is either a compelling need or statutory requirement (See Texas Government Code §§ 2156.004 and 2156.011 for statutory requirements). Placing bond requirements in the specifications can restrict competition and delay the award, as well as raise the cost of the contract to the state since bonds are not routinely maintained by businesses and require actual outlays of capital to obtain.

If the ordering entity elects to require a bond, the bonding requirement must be stated in writing as a part of the specifications in the Invitation for Bids (IFB) or Request for Proposal (RFP).

As a guide for determining the value of bond requirements, bonding levels for TPASS term contracts (if a bond is required) are listed below:

Size of Award	Bond Requirements
up to \$100,000	No bond required
\$100,001 to \$250,000	\$25,000 bond
\$250,001 to \$500,000	\$50,000 bond
Over \$500,001	- \$50,000 plus 5% of the amount over \$500,000 rounded to the next \$1,000

Pursuant to Texas Government Code § 2156.004, TPASS may require a bid deposit, if necessary, in an amount which will be determined by TPASS. If TPASS requires a deposit, this amount must be stated in the public notice and the Invitation for Bid or Request for Proposal. TPASS will refund the bid deposit of an unsuccessful bidder upon the award of a bid or the rejection of all bids. TPASS may also accept a bid deposit in the form of a blanket bond.

The above requirements should be followed for procurement initiatives over \$100,000 in value that have been delegated to agencies. For bonding requirements associated with major contracts (over \$1 million in value), agencies should refer to the State Contract Management Guide at: <http://www.window.state.tx.us/procurement/pub/contractguide/>.

**NOTE:** Bonding companies have to be U. S. Treasury listed. Bonds completed (signed) by an out-of-Texas surety require a counter signature by a Texas resident agent of a company chartered or authorized to do business in Texas.

**Please consult your legal counsel for guidance when requiring bonding.**

## **Section 2.22**

### **Liquidated Damages**

Liquidated damages establish a specific contractual dollar amount that the ordering entity has determined is a reasonable estimation of the damages owed in the event of a breach of contract. Such a provision is typically only considered valid if damages are unable to be calculated or estimated by any other means. Liquidated damages are never meant to be a penalty for breach. Rather, they are an artificially created amount of damages to be awarded in the event of a breach of contract. An ordering entity should closely examine its needs for including liquidated damages. If required, the liquidated damages must be included in the specifications. Consult your entity's legal staff and/or the Office of the Attorney General's Financial Litigation Division regarding the establishment of liquidated damages because certain legal principles must be applied to render the damages valid. Liquidated damages provisions are typically difficult to enforce and equally difficult to collect upon.

**Note:** Proper contract management/development should include provisions that adequately protect the state from default.

## **Section 2.23**

### **Solicitation Advertisement Requirements**

#### **Solicitation Advertisement Requirements – Electronic State Business Daily (ESBD)**

State agencies are delegated the authority to make purchases for commodities up to \$25,000, except for commodities on TxSmartBuy term or TPASS Managed contracts. This includes the authority to procure items such as fuel, perishable foods, publications, distributor items, and emergency items. Agencies are required to solicit proposals from all eligible vendors listed on TPASS's Centralized Master Bidders List (CMBL).

The purchase of services up to \$100,000 is delegated to state agencies, except for services on term contracts. The term "services" is defined as the performance of duties helpful to others, or labor by a contractor which does not include the delivery of a tangible end product and does not include professional and consulting services or services of a public utility.

Purchases for services exceeding \$100,000 must be submitted for review by TPASS prior to the state agency advertisement of the solicitation.

In accordance with Texas Government Code § 2155.083 and 34 Texas Administrative Code §20.212, the requirement to advertise solicitations by posting on the Electronic State Business Daily (ESBD) applies to all purchases exceeding \$25,000 regardless of source of funds used for the procurement. This requirement includes delegated purchases, emergency, construction projects, professional or consulting services, proprietary purchases or purchases exempt from TPASS's purchasing authority.

Proof and verification of the posting on the ESBD is required to be included in the procurement file.

The ESBD is available at: <http://esbd.cpa.state.tx.us/>

**Note:** This rule is effective June 1, 1998 and applies to all contracts awarded after July 1, 1998.

<b>ESBD Posting Timelines</b>	
<b>Estimated Procurement/Contract Amount Exceeding \$25,000</b>	<b>Minimum Calendar Days for Advertisement</b>
Complete solicitation package (including all parts, exhibits and attachments)	14 calendar days
If <b><i>NOT</i></b> posting the complete solicitation package then a notice must be posted that includes at a minimum the following:	21 calendar days
<ul style="list-style-type: none"> <li>• The agency's solicitation number.</li> <li>• A short title and a brief description of the goods or services to be procured and how and where interested vendors can obtain the solicitation package</li> <li>• All applicable NIGP Class/Item codes for the goods and services;</li> <li>• The due date and time on which responses or other applicable expressions of interest will be accepted;</li> <li>• The estimated quantity of goods or services to be procured (Optional)</li> <li>• The previous price paid by the agency for the same or similar goods or services may be posted (Optional and should be seriously considered prior to posting)</li> <li>• The estimated date on which the goods or services to be procured will be needed;</li> <li>• The name, business mailing address, and business telephone number of the agency point of contact to obtain all necessary information related to making a response or other applicable expression of interest for the solicitation</li> </ul>	
<p>The 21 day advertisement period is for those procurements where "the entire solicitation package" cannot be posted if it is very lengthy or complex. This should be considered when determining the length of time for the posting.</p> <p><b>A procurement or contract award made by a state agency that violates the applicable minimum time for posting is void.</b></p>	
Emergency Procurements	Less than 14 Calendar Days

Access the TPASS Web Application Portal for more information regarding the ESBD at: <https://portal.cpa.state.tx.us/about.asp>

Questions can be directed by e-mail to: [esbdsupport@TPASS.state.tx.us](mailto:esbdsupport@TPASS.state.tx.us)

The term ***superuser*** is a term associated with the ESBD. TPASS has broadened the term to mean both ***security coordinator*** for the portal, and ***superuser*** for ESBD. Superusers are responsible for:

- Ensuring their own agency's users - Super Users do not share or distribute their assigned passwords,
- Ensuring their own agency's users - Super Users do not misuse the web portal and/or any applications available through the web portal,
- Notifying TPASS immediately whenever they discover anyone misusing their web portal privileges,
- Maintaining portal IDs (add, edit, delete) for the agency's users,
- Adding new portal IDs when the agency hires new personnel or when users' job duties change, or
- Editing portal IDs when the agency personnel requires revised access to the web portal or when users' job duties change, and
- Deleting portal IDs when users' job duties change or they leave the agency
- Managing access to the various web applications,
- Modifying ESBD postings

The term ***portal id*** simply means that the person has a username and password on the portal; it does not indicate access to any portal applications and may merely be for the purpose of being a contact in TPASS's Agency Address/Contact system. Superusers must add the user to a group via ***Group Membership by Group***, or ***Group Membership by User*** for the user to have access to a particular portal application.

If a user is a member of the ***Electronic State Business Daily*** group, then the user is considered a ***registered agent*** in ESBD. These users can enter solicitation postings, but they cannot modify existing postings once they are entered, except to post the award information. Only registered agents who are Superusers have the ability to modify existing bid postings.

Eligible "Registered Agents" are:

Employees of a State Agency,

Employees of a member in good standing of TPASS's State of Texas CO-OP Purchasing Program, as defined by Sections 271.081-271.083 Local Government Code, V. T. C. A., Section 2155.202 and 2175.001(1) of the Texas Government Code, Title 10, Subtitle D:

- Counties
- Municipalities
- School Districts

- Special Districts
- Local Workforce Development Boards
- Jr. & Community Colleges
- Educational Service Centers
- MHMR community centers
- Assistance organizations

Any entity that is not a state agency or State of Texas CO-OP member shall not be given access to any TPASS Web Portal Application.

A user with access to the ESBD shall not distribute his/her login and password to any other entity working on behalf of an agency or CO-OP member, including but not limited to:

- consultants,
- contractors,
- other agencies or CO-OP members.

Users may enter data into any of the other web applications for which they have been given access.

**Note:**

- Contracts for Consulting Services over \$15,000 **must** be published in the Texas Register (effective 9/1/97). For additional information on Texas Register Notices, please contact the Secretary of State.
- Interagency Contracts (IACs) are with entities of governments, are not subject to TPASS authority, including ESBD posting and are not competitively procured contracts. Interagency and Inter-Local contracts are in a separate title of the Government Code which is outside of TPASS/TPASS purview.

**Legal Source:**

Texas Government Code Title 10, Subtitle D  
 Texas Government Code §2155.083  
 34 Texas Administrative Code §20.212.

**Internet Source:** <http://esbd.cpa.state.tx.us/>

## **Section 2.24**

# **Centralized Master Bidders List (CMBL)**

### **Introduction:**

The Centralized Master Bidders List (CMBL) is a database of registered vendors who have provided contact information and information on goods or services they offer. Texas Government Code § 2155.263 requires TPASS to maintain the CMBL. Vendors pay a nominal annual fee to receive notification of opportunities for solicited commodities and/or services through an Invitation for Bid, Request for Proposal, Request for Offer or Request for Qualifications.

### **Utilization of the CMBL**

Only with TPASS approval in an open meeting may an agency be authorized to maintain and use its own bidders' list(s) for specialized needs. The requests must be made in writing to the Director of Procurement and signed by the Chief Executive Officer of the requesting agency. All requests should clearly identify the reasons and justification for the request.

All agencies and institutions of higher education utilize the CMBL for all purchases or other acquisitions, including the acquisition of services, for which competitive bidding or competitive sealed proposals (CSP/RFP) are required.

The CMBL is to be used for all available procurement processes authorized in the State Government Code and to the fullest extent possible by state agencies that make purchases exempt from the TPASS purchasing authority.

### **Required Use**

Unless exempted by law, the CMBL must be used for all procurements subject to TPASS's procurement authority. The CMBL must also be used to the fullest extent possible by state agencies that make purchases exempt from TPASS's purchasing authority. The CMBL may also be used to gather information for noncompetitive procurement processes and for vendor performance data.

For purchases between \$5,000 and \$25,000, solicit from a minimum of three (3) vendors on the CMBL with two (2) being TPASS certified Historically Underutilized Business (HUB). Purchases under \$5,000 may also be supplemented with non-CMBL vendors.

For purchases of \$25,000 or greater, solicit from all vendors who provide the required commodity or service and also service the agency's geographic region.

### **Supplementing the CMBL**

With the approval of the Agency Head or designee, agencies may supplement the CMBL to enhance competition.

The CMBL may also be supplemented if selecting from the list of HUB vendors not on the CMBL for increased HUB participation in the solicitation and from non-CMBL vendors which would include incumbent contractors.

## **Vendors**

The CMBL is comprised of manufacturers, suppliers and others wishing to furnish materials, equipment, supplies and services to the state.

The vendor has the responsibility for maintaining its CMBL profile to ensure correct information for receipt of bids based on products and/or services which can be provided for selected districts for the state. Bidders are urged to carefully consider the class and item numbers and to list only those which they can supply on a routine basis as bidding opportunities are dependent upon this information. [Texas Government Code Chapter 2157](#)

## **CMBL Registration**

- Online registration activates the profile within 30 minutes.
- The annual payment established by TPASS for registration/renewal may be paid online by credit/debit card or check withdrawal.
- Applications mailed in may take up to 30 days to process
- A mailed payment must be remitted in US dollars payable to the Comptroller of Public Accounts. The hard copy application must be included with the payment.
- Incomplete registration delays profile activation.

## **NIGP Commodity Code Selection**

TPASS references the [National Institute of Governmental Purchasing \(NIGP\) Commodity Book](#), which numerically classifies all supplies, equipment, materials and services based on class and items. The class and item code is required on the Purchase Order.

All vendors signed up for class and items referenced on the solicitation documents are automatically included in the listing sourced by an agency. Solicitations posted by agencies and the Cooperative Purchasing Program members are available on line on the [Electronic State Business Daily](#).

## **CMBL Profile Updates/Changes**

Vendors have the capability to update their profile and pay the renewal fee on-line.

Changes to tax identification numbers or business names require the vendor to submit the information on a letterhead signed by an owner, partner or corporate officer and faxed to 512-936-2625 or emailed to [e.cmb1@cpa.state.tx.us](mailto:e.cmb1@cpa.state.tx.us).

### **Vendor Performance Tracking**

The Vendor Performance Tracking System was developed to enhance the relationship between the vendor community, state agencies and cooperative purchasing members. The vendor tracking program provides a comprehensive tool for evaluating vendor performance and for reporting both satisfactory and unsatisfactory performance.

Information regarding reported vendor performance may be found on each vendor's profile in the CMBL database.

### **Removal from the CMBL**

A vendor may be removed or temporarily suspended from the CMBL for one or more of the following reasons:

- failure to pay or unnecessarily delaying payment of damages assessed by the TPASS;
- failure to remit the annual CMBL registration fee; or
- any factor set forth in Texas Government Code §§ 2155.070 or 2155.077.

**Note:** A vendor that has been removed from the CMBL shall not be reinstated until expiration of period for which the vendor was removed and the appointed TPASS officer grants approval.

### **CMBL Help Desk**

CMBL agency or vendor-related questions can be directed to the help desk at 512-463-3459 or by email to [e.cmb1@cpa.state.tx.us](mailto:e.cmb1@cpa.state.tx.us).

**Legal source:** Texas Government Code §§ 2155.070, 2155.077, 2155.263, 2157.001 through 2157.067

<http://www.window.state.tx.us/procurement/tools/comm-book/>



## Section 2.25

# Bid Receipt – Invitation for Bids

### Receipt and Control of Solicitation Proposals

State law requires formal proposal responses to be received by or before the published due date and time; responses must remain sealed until **after** published **due** date and time.

Proper identification on the outside of the proposal response envelope or package is important. The solicitation document should require the proposal response envelope or package to show the solicitation number, due date and time and respondent's name.

Upon receipt, the sealed proposals should be date and time stamped directly on the envelope, when possible, or on the express delivery label, and must remain sealed and kept in a secure place to prevent misplacement, loss or tampering, until after due date and time.

Despite the instructions contained in the solicitation document, a respondent will occasionally submit a sealed proposal without proper identification.

If a proposal is inadvertently opened by agency personnel other than the procurement official handling the procurement, the following must be adhered to:

- Proposals inadvertently opened must be resealed, marked with "Opened in Error", and indicate who opened the proposal in error.
- Envelopes/packages opened for purposes of identification must be marked with "Opened to Identify," resealed, dated, and must be signed or initialed by the person who opened the proposal. The Solicitation Document Number and Due Date/Time should be documented on the outside. Following this procedure will allow the package to retain its status as a sealed proposal.
- As allowed by the solicitation document, proposals received by facsimile or by electronic means must be treated as sealed proposal documents and kept secure until after the proposal due date and time. These documents must be accompanied by either a fax receipt notice or a hard copy of the e-mail transmission reflecting the date and time of receipt. If the faxed document(s) do not have a date/time stamp, one should be affixed manually immediately upon receipt.

### Log for Proposals Received:

The use of a log listing the respondents' names for proposals received is optional but is convenient for answering questions from the vendor community regarding the receipt of their submitted proposal documents.

A Proposal Receipt Log should contain:

- Name of person entering information in the log
- Solicitation Number

- Due Date/Time
- Date Received
- Respondent Name
- Delivery Method (E-Mail, Fax, Express Delivery (i.e. Fed Ex, etc.), Hand Delivery, U.S. Mail)
- Tracking/Fax Number
- Number of Pages Received
- Package Comment

### **Withdrawing Proposals**

A respondent may withdraw its proposal in person by presenting a request to withdraw on company letterhead at any time prior to the proposal due date and time. The respondent must present identification (e.g. corporate identification card, photo identification card to match authorized person on proposal response, etc.) indicating that he or she represents the business withdrawing a proposal. The Proposal Withdrawal Form or company letter will become part of the procurement file. If a respondent submits a written or faxed withdrawal letter, the written request will be added to the procurement file and given to the agency purchaser who will then make a decision on the request.

### **Internal Rules and Procedures:**

Rules or internal procedure manuals should establish the responsibilities and steps for the receipt and control of proposals.

Issues addressed should include:

- date and time stamping proposals on receipt
- procedures for inadvertently opened proposals
- maintaining a log of proposals received
- securing them until proposal opening, and
- designation of persons responsible for each of those tasks.

If the agency allows for proposals to be received via U.S. mail, special carrier, hand delivery, facsimile or electronic transmission, that process should also be addressed in the agency's internal procedures.

## **Section 2.26**

# **Bid Opening and Bid Tabulation**

### **Response Due Date and Receipt**

The response due date and time shall be clearly specified in the solicitation document.

Late Response: A response received after the due date and time established by the solicitation document is a late response. Late responses will be returned unopened with a cover letter indicating the reason.

A change in the response due date and time must be published through an Addendum to the solicitation and posted to the ESBD, as applicable. Entities on the original CMBL mailing list and respondents must be properly notified in advance.

The agency may receive responses in person, by US mail or by express mail with the addresses included in the solicitation. The clock used by the agency's mail room or the procurement staff facilitating the receipt will be the sole determiner of the time of day. All responses must be in the possession of the procurement staff and stamped not later than the published response due date and time.

At the discretion of the agency, receipt of responses by fax or email is solely for the convenience of respondents and the procedure must be included in the solicitation. If all or any portion of a response submitted by fax or email is received late, is illegible, or is otherwise rendered non-responsive due to equipment failure or operator error, the response or the applicable portion of the response will not be considered. The agency shall not be liable for equipment failure or operator error. Such failure or error shall not require other solicitation documents to be rejected or require the solicitation to be re-advertised. Typically, late responses are not accepted unless the solicitation specifically provides for such a provision.

Cancellation: If a solicitation is cancelled, all responses will be returned unopened with a cover letter indicating the reason for the cancellation.

## **Public Opening**

It is at the discretion of each agency to determine if a public opening will occur on a solicitation. In cases where a solicitation requires cancellation due to required changes in specifications or scope of work which will result in a re-advertisement, the decision not to release information will protect each respondent's information and pricing, providing fairness to all.

At the option of the agency, a public opening of the sealed responses may be conducted and the date, time and physical location must be included in the solicitation document. The option to conduct a public opening of responses is a statement of openness to reduce the possibility of collusion or favoritism and to foster public confidence in the agency.

A change in the response due date and time or in the public opening date and time must be published through an Addendum to the solicitation and posted to the ESBD, as applicable. Entities on the original CMBL mailing list and respondents must be properly notified in advance.

If a solicitation is canceled, all responses being held for opening will be returned to the respondents unopened with a cover letter indicating the reason for cancellation.

The procurement staff facilitating and conducting the public opening of the responses should request each attendee to sign an attendance log, providing their company name, representative name and title, which will become a part of the procurement file.

The sealed responses may be opened and read in any order.

The recitation of information during the public opening should consist of:

- The solicitation number
- The name of each respondent
- For IFBs ONLY, the proposed price/amount for each item number (if applicable)
- If appropriate, the model number (if different from specified model).

While the information being announced may vary due to the type of procurement, it should be sufficient to identify the response for purposes of a written tabulation, abstract or log, which becomes an official document in the procurement file.

The procurement staff will not discuss whether a product or model meets the written specifications. Respondents in attendance will be advised to submit any concerns in writing to the appropriate purchaser.

## **Unsigned Responses**

Responses should be checked for signature before tabulation. Responses without a signature will be disqualified. The pricing for these will NOT be tabulated and will reflect "Unsigned/Disqualified" in the comment area of the tabulation sheet and on the response document. They will be kept with the main file, and will not be returned to the respondent.

## **Response Tabulation**

The responses and all documents and information about the evaluation of responses and respondents will be withheld until after contract award.

As a general rule, responses should be tabulated when opened but there are times when this is not practical. It is recommended that the tabulation be prepared within three (3) business days from the opening date.

After award, the response tabulation files shall be available for release through the Public Information Act. Response tabulations may be reviewed by any interested person at each agency's office during regular working hours. Agencies should not give response tabulation information by telephone.

At a minimum, the following should be included on the tabulation:

- NIGP Class/Item
- Confidential or Proprietary declarations by respondent
- Vendor (Payee) Identification Number

- Respondent name
- HUB Status
- Price Sheet Line Item Descriptions
- Price
- Delivery Days ARO
- Warranty

## Section 2.27

# Preferences

### Source Preferences

The following source preferences are used when applicable goods or services can be supplied by these entities:

#### **Products By Persons with Disabilities**

A preference shall be given to manufactured products of workshops, organizations, or corporations whose primary function is training and employing persons with mental or physical disabilities if the products or services meet state specifications as to quantity, quality, and price. Competitive bids are not required for purchases of goods or services offered through the State Use program managed by TIBH Industries, Inc. on behalf of the Texas Council for Purchasing from People with Disabilities if the goods or services meet state specifications as to quantity, quality, delivery, life cycle costs and testing and inspection requirements. Texas Human Resources Code §122.008, 40 Texas Administrative Code §189.2(9).

- **Texas Department of Criminal Justice (TDCJ)/Institutional Division**  
A preference shall be given to items manufactured by the Texas Correctional Industries (TCI) under the Prison Made Goods Act (see Section 2.5 Set-aside Purchases). Reference Texas Government Code Chapter 497.
- **Texas and United States Products and Texas Services**  
A preference shall be given to goods, including agricultural products, produced or grown in this state or offered by Texas bidders. If goods, including agricultural products produced or grown in this state or offered by Texas bidders, are not equal in cost and quality to other products, then goods, including agricultural products produced or grown in other states of the United States, shall be given preference over foreign products if the cost to the state and quality are equal. Reference Texas Government Code § 2155.444.
- **Products and Services from Economically Depressed and Blighted Areas**  
A preference shall be given to goods and services produced in an economically depressed or blighted area if the goods or services meet state specifications regarding quantity and quality and the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area. Reference Texas Government Code § 2155.449. An economically depressed or blighted area is defined by Texas Government Code § 2306.004.
- **Products of Facilities on Formerly Contaminated Property**
- A preference shall be given for goods produced at a facility located on property for which the owner has received a certificate of completion under Health and Safety Code §361.609, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price. Reference Texas Government Code § 2155.450.

### Specification Preferences

The following items are preferences regarding recycled materials:

- **Recycled, Remanufactured, or Environmentally Sensitive Products**

A preference shall be given to products made of recycled materials if the products meet state specifications as to quantity and quality.

Texas Government Code § 2155.445 and 361.426 requires all state agencies, institutions of higher education, state courts, judicial agencies, counties, municipalities, school districts, junior or community college districts, or special districts to follow certain precepts regarding recycling and the purchase of recycled content products.

Texas Government Code § 2155.445(a) provides that all entities **"give preference to recycled, remanufactured, or environmentally sensitive products" as determined by CPA rule if the purchases meet applicable specifications as to quantity and quality.**

Texas Government Code § 361.426(a) provides that a state agency, state court, or judicial agency not subject to Texas Government Code, Subtitle D, Title 10, a county, municipality, school district, junior or community college district, or special district shall give preference to purchasing products made of recycled materials if the products meet applicable specifications as to quantity and quality.

Texas Government Code § 2155.448(a) states that each fiscal year, TPASS by rule may identify recycled, remanufactured or environmentally sensitive commodities or services. Under 34 Texas Administrative Code § 20.135 TPASS may designate as "First Choice" certain recycled, remanufactured or environmentally sensitive commodities or services. These "First Choice" items include but are not limited to the following:

- Re-refined oils and lubricants;
- Recycled-content toilet paper, toilet seat covers, paper towels;
- Recycled-content printing, computer and copier paper, and business envelopes; and
- Recycled/reused computer equipment of other manufacturers.

First Choice products essentially become the default items for purchase by state agencies including institutions of higher education; that is, state agencies shall give these products preference over virgin (non-recycled) counterparts. A state agency may choose to buy the virgin (non-recycled) material counterpart of these designated products if the agency submits a written justification letter, signed by the executive head of the agency. The justification letter must state the reason(s) for the determination that the First Choice product did not meet the requirements of the agency and should include applicable supporting documentation. The justification letter must be filed with TPASS.

Beginning with fiscal 2001, each state agency, including institutions of higher education, is responsible for compiling a final recycled product report by combining the TPASS non-delegated recycled, remanufactured and environmentally sensitive purchase report with the state agency's delegated recycled, remanufactured and environmentally sensitive purchases. This final combined report must be included in your agency's Annual Financial Report (AFR) submitted to TPASS and a copy must also be sent to TPASS.

TPASS will post on its Web site the state's consolidated final recycled product report for public viewing of state successes in supporting recycled product purchases. For additional information regarding reporting requirements please see Section 1.3.

- **Energy Efficient Products**

A preference shall be given to energy efficient products if they meet state requirements as to quantity and quality, and are equal to or less than the cost of other products that are energy efficient. This preference shall be applied by evaluating the energy use of the product offered and considering the costs of such energy use over the expected life of the equipment. The methodology for evaluating energy use and costs shall be included in the solicitation document. Reference Texas Government Code § 2155.442.

- **Rubberized Asphalt Paving Material**

A preference shall be given to rubberized asphalt paving material made from scrap tires by a facility in this state if the cost, as determined by life-cycle cost benefit analysis, does not exceed the bid cost of alternative paving materials by more than 15%. Reference Texas Government Code § 2155.443.

- **Recycled Motor Oil and Lubricants**

A preference shall be given to motor oils and lubricants that contain at least 25% recycled oil if the quality is comparable and the cost is equal or less than new oil and lubricants. Reference Texas Government Code § 2155.447.

- **Vendors that Meet or Exceed Air Quality Standards**

A preference may be given to goods or services of a vendor that meets or exceeds state or federal environmental standards, including voluntary standards, relating to air quality. The preference may be given only if the cost to the state for the goods and services would not exceed 105% of the cost of the goods and services provided by a vendor who does not meet the standards. Reference Texas Government Code § 2155.451.

- **Recycled or Reused Computer Equipment of Other Manufacturers**

A preference shall be given to a manufacturer that has a program to recycle or reuse the computer equipment of other manufacturers, including collection events, recycling grants, and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand. Reference Health and Safety Code § 361.965(d).

- **Foods of Higher Nutritional Value**

A preference may be given to a contractor who provides foods of higher nutritional value and who does not provide foods containing trans fatty acids for consumption in a cafeteria. The Department of Agriculture's nutrition standards shall be reviewed in complying with this preference. Reference Texas Government Code § 2155.452.

### **Tie-Bid Preferences**

The preferences listed below are used in breaking tie bids in accordance with current statutes. Priority is given in the sequence listed below (see Section 2.28 Tie Bids). To claim a preference a bidder must mark the appropriate box on the solicitation document. If the



appropriate box is not marked, a preference will not be granted unless other documents included in the solicitation document indicate a right to the preference.

- **Texas Agricultural Products**

Agricultural products grown in Texas or offered by a Texas bidder shall be given preference over comparable products grown outside Texas when the cost and quality of the goods are equal. Agricultural products are considered "grown in Texas" if they contain any amount grown in Texas. In case of tie bids between agricultural products claiming the preference, the bidder whose product contains the greatest percentage of the product grown in Texas shall prevail. For the purpose of this preference, agricultural products include, among other things, textiles and fiber products, processed and unprocessed foods, feed, lumber, and forestry products, live animals, plants, flowers, and nursery stock. Texas Government Code § 2155.444(a).

- **Texas Produced Supplies, Materials, or Equipment**

Supplies, materials, or equipment produced in Texas shall be given preference over comparable goods produced outside Texas when the cost and quality of the goods are equal. Supplies, materials, and equipment are considered to be produced in Texas if they are manufactured in Texas; "manufactured" does not include the work of packaging or repackaging. Texas Government Code § 2155.444(a).

- **Texas Resident Bidder – Service-Disabled Veteran**

Goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference if the cost to the state and quality are equal. Reference Texas Government Code § 2155.444(a).

- **U.S. Produced Supplies, Materials, or Equipment**

Supplies, materials, equipment, or agricultural products produced or grown in the United States shall be given preference over foreign products when the cost and quality are equal, if comparable goods of equal cost and quality produced or grown in Texas or offered by Texas bidders are not available. Reference Texas Government Code § 2155.444(b).

**NOTE:** For Reciprocity Information see Section 2.29 Reciprocity.

## SECTION 2.28

### Tie Bids

The following preferences are used in breaking tie proposals in accordance with current statutes. Texas Government Code §§ 2155.444, 2155.441, 2156.010. Priority is given in the sequence listed below. To claim a preference a respondent must mark the appropriate box on the solicitation document. If the appropriate box is not marked, a preference will not be granted unless other documents included in the response indicate a right to the preference.

#### FOR GOODS:

- Goods produced or offered by a Texas Resident Bidder owned by a Service-Disabled Veteran
- Goods produced or offered by a Texas Resident Bidder
- Agricultural Products grown in Texas
- Agricultural products offered by a Texas Resident Bidder
- Goods, including agricultural products, produced or grown in the United States

#### FOR SERVICES:

- Services offered by a Texas Resident Bidder owned by a Service-Disabled Veteran
- Services offered by a Texas Resident Bidder

#### FOR GOODS AND SERVICES:

If two respondents propose the same price and preferences, the line item is awarded by tossing a coin or drawing names. Either of these processes requires that two personnel, preferably outside of the purchasing office, perform the action(s). If two respondents propose the same price but the preferences checked are different, the award is based on the priority listed above.

Examples:

Product	Bidder A	Bidder B
Texas Agricultural Product		
Texas. Product	X	
Texas Resident Bidder		
U. S. Product		X

*Award is made to Bidder A. Priority is given to the Texas Produced Product over the U. S. Produced Product.*

Product	Bidder A	Bidder B
Texas Agricultural Product	X	X
Texas. Product	X	X
Texas Resident Bidder		X
U. S. Product		

*Award is made to Bidder B. Since both bidders show preference to Texas Agricultural and Texas Products, priority is given to the Texas Bidder.*

Product	Bidder A	Bidder B
Texas Agricultural Product		
Texas. Product		
Texas Resident Bidder	X	X
U. S. Product		

*Award is made by drawing lots.*

## SECTION 2.29

### Reciprocity

Texas law requires that out-of-state bidders who reside in states that grant resident bidder preferences for that state's purchases be evaluated in the same manner that a Texas resident bidder would be evaluated in the out-of-state bidder's home state. Specifically the law states:

A [Texas] governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located (Tex. Government Code § 2252.002).

This process of evaluating out-of-state bidders is generally known as "reciprocity."

In a bidding situation, if a nonresident bidder's home state grants a *preference* to its resident bidders, an equal *penalty* is added to the nonresident bidder's proposal when bidding in Texas. The action is opposite, a preference becomes a penalty, but the amount is equal.

For example, state A grants its in-state bidders a 10% preference when bidding on agricultural products. By granting a 10% preference to in-state bidders, state A is essentially penalizing Texas bidders 10% for not being residents.

Texas reciprocates by adding a 10% *penalty* to the bidder from state A which essentially gives a 10% *preference* to Texas bidders. The state A bidder gets a 10% *preference* over Texas bidders in state A. Conversely, the state A bidder gets a 10% *penalty* when bidding in Texas.

Reciprocity and resident bidder preferences ***do not*** apply in the evaluation of solicitations that involve the use of federal funds (Texas Government Code §2252.004). Further, reciprocity only applies to the ***evaluation*** of the bids and only in situations where the preference from the bidder's state is based on residency. Awards are made at the original bid price.

To help governmental entities in their duty to evaluate bids in a reciprocal manner, TPASS is required to publish a list of the states that give a preference based on residency (Texas Government Code §2252.003(a)). The list is published annually in the *Texas Register*. The list provided at ... will be updated as changes occur. The list is a valuable resource. However, the TPASS stresses that statutes should be construed in their entirety. Before relying on any section for evaluation of a bid, TPASS recommends obtaining and reviewing the relevant law or regulation in its entirety.

### **Reciprocity Reference Documents:**

List of States with Resident Bidder and Reciprocal Preferences revised [pdf version]

State Map with Links to Individual States' Resident Bidder and Reciprocal Preferences

[Statutory Citation Chart—States with Resident Bidder and Reciprocal Preferences \(pdf file revised 11/2009\)](#) See

[http://www.window.state.tx.us/procurement/pub/manual/Resident Bidder Citation Chart2009.pdf](http://www.window.state.tx.us/procurement/pub/manual/Resident_Bidder_Citation_Chart2009.pdf)

[Texas Government Code §§ 2252.002- 2252.004](#)

## SECTION 2.30

### Evaluation and Awards

#### Evaluation

An award is made through an evaluation process to the respondent offering the best value for the state while conforming to the specifications or statement of work required. Complying with the specified time limit for submission of written data, samples, or models is essential to the acceptability of a proposal.

In some instances the safety record of the respondent may be considered in determining the best value. If considered, an adopted written definition and criteria for accurately determining the safety record must be provided to prospective respondents in the solicitation documentation. The criteria must not be arbitrary or capricious and must be specifically addressed in the solicitation pursuant to the provisions of Texas Government Code §§ 2155.074 and 2155.075.

Any of the criteria listed below may be considered as long as provisions are outlined in the solicitation. The evaluation criteria must be in the solicitation when it is advertised and should specifically outline what will be considered and what weight the criteria will have in the evaluation process. Any criteria must have objective definitions and identified measures. For more complex solicitations, an evaluation team should be utilized and should include individuals with working and industry knowledge regarding the procurement. Examples of evaluation criteria used in conjunction with the Request for Proposal (RFP) process can be found in the Contract Management Guide at

<http://www.window.state.tx.us/procurement/pub/contractguide/Appendix12BAFOEval.pdf>

Typical criteria that should be used in determining the proposal offering the best value in addition to price are:

- the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services to the particular use required;
- the number and scope of conditions attached to the respondent's proposal;
- the ability, capacity, and skill of the respondent to perform the contract or provide the service required;
- whether the respondent can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- the character, responsibility, integrity, reputation, and experience of the respondent;
- the quality of performance of previous contracts or services;
- any previous or existing noncompliance by the respondent with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- the sufficiency of the financial resources and ability of the respondent to perform the contract or provide the service; and

- the ability of the respondent to provide future maintenance, repair parts, and service for the use of the contract.

Additional general best value evaluation factors found in Texas Government Code § 2155.074(b)

- (1) installation costs;
- (2) life cycle costs;
- (3) quality and reliability of the goods and services;
- (4) delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- (6) cost of any employee training associated with a purchase;
- (7) effect of a purchase on agency productivity;
- (8) vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; and
- (9) factors relevant to determining the best value for the state in the context of a particular purchase.

### **Aids to Evaluation**

The WRITTEN DATA RULE applies:

1. If written data is required in order to evaluate proposals, a solicitation that expressly requires the submission of written data with the response must include the following statement or its substantial equivalent.

**"Failure to provide the required information with the response may disqualify the response from consideration for award."**

2. When evaluating proposals, primary consideration may be given to the written data already provided.

The following are options when considering an award:

**AWARD:** Contract issued to the respondent that offers the best value and meets **all** the specifications and requirements of the solicitation is selected.

**NO AWARD:** A "no award" is based on the following circumstances:

- no responses received;
- no respondents met the specifications and requirements; or
- agency decides it does not wish to make an award due to:
  - budgetary constraints or

- change in agency requirements.

**RE-AWARD:** An award may be made to the next lowest respondent meeting the specifications and requirements if the original awarded respondent cannot meet the conditions of the contract/purchase order, or permission is granted to cancel the contract/purchase order.

When applicable, see Section 2.28 Tie Bids

**DOCUMENTATION REQUIRED FOR THE CONTRACT/PURCHASE ORDER FILE PRIOR TO AWARD:**

**Federal Excluded Persons List System (EPLS):**

Pursuant to TPASS rules, the state may consider debarment actions by other government entities as possible indicators of vendor responsibility. Prior to awarding any contracts, state agencies and qualified local government purchasing entities are reminded to check the list of vendors excluded from doing business at the federal level by utilizing the **Federal Excluded Persons List System (EPLS)** at <http://www.epls.gov>. Additionally, in compliance with Executive Order #13224 - "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism," state agencies are responsible for ensuring they do not enter into transactions with or issue payments to those individuals or organizations identified in the **Office of Foreign Assets Control list of Specially Designated Nationals (SDN) and Blocked Persons**. The list may be found at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>.

**The EPLS check must be conducted, preferably no more than seven (7) days prior to the award date. It is also recommended that the check be performed prior to the renewal of a contract.**

**FOR OPTIMAL EPLS SEARCH SELECT MULTIPLE NAMES**

**This search must be done prior to award.**

**Utilizing Exact Name and SSN/TIN is not recommended**





EPLS Search Results

**Search Results for Parties Excluded by**

Firm, Entity, or Vessel : Company AND Inc  
 Individual : John Doe  
 Individual : John Q Doe  
 As of 24-Jun-2011 11:10 AM EDT  
[Save to MyEPLS](#)

Your search returned no results.

[Back](#) [New Search](#) [Printer-Friendly](#)

## PRINTER-FRIENDLY

**Printer should be set up to include date printed on document**

**It is recommended the search be processed no more than seven (7) days prior to award.**



Search Results Excluded By  
 Firm, Entity, or Vessel : Company AND Inc  
 Individual : John Doe  
 Individual : John Q Doe  
 as of 24-Jun-2011 11:11 AM EDT

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Your search returned no results.

**NOTE:** EPLS checks are not required for awards made to TIBH Industries Inc. and Texas Correctional Industries (TCI) as these entities hold statutory and contractual responsibilities under the state's set aside program.

## WARRANT HOLD STATUS

All state agencies and institutions of higher education are required to notify the Comptroller's office of every person or debtor with an outstanding state debt (indebtedness, tax delinquency, or student loan default). Reporting these debts enables the Comptroller to hold state payments issued to these individuals or entities in accordance with [Texas Government Code § 403.055](#). (Junior colleges are excluded from this requirement.) Reference Section 8 of the TPASS Hold Procedures Guide: [https://fm.x.cpa.state.tx.us/fmx/pubs/hold\\_guide/08-researching.php](https://fm.x.cpa.state.tx.us/fmx/pubs/hold_guide/08-researching.php)

<https://fm.x.TPASS.state.tx.us/fmx/tins/index.php>

You may make an award to a respondent that is on warrant hold. Prior to making an award, it is recommended that a warrant hold check be performed for the potential respondents receiving an

award. Agency personnel must request to obtain access to TINS, USAS and USPS through their security coordinator.

Reference Texas Identification Number System Guide – Chapter 4 – TINS Screens:

[https://fmx.cpa.state.tx.us/fmx/pubs/tins/tinsguide/ch4/4\\_7.php#pyhold](https://fmx.cpa.state.tx.us/fmx/pubs/tins/tinsguide/ch4/4_7.php#pyhold)

To determine the warrant hold status, use (PYHOLD) - PAYEE HOLD INFORMATION on the menu and enter the Texas Vendor Identification number or the Federal EIN No. preceded by a 1.

Provide the information to the respondent regarding their hold status by providing the identity of the agency that placed them on hold or refer them to TPASS at 1-800-531-5441 Ext. 68138.

To determine which agency to reference, use (RSNINQ) - AGENCY HOLD REASON INQUIRY.

**Note:** The rationale for making an award to an otherwise qualified respondent (other than warrant hold) is that by making the award, an obligation to compensate the contractor is created by the receipt of a good or service by the state. Once the request for warrant is processed by the Comptroller's office, compensation for the warrant hold is collected.

### **Issue the Contract/Purchase Order:**

Award the contract to the respondent offering the best value while conforming to the required specifications, terms, and conditions. Issue a Notice of Award letter or purchase order with the following required information:

- agency name and address;
- agency contract or purchase order number;
- date of the order
- term of contract (delivery period after receipt of order or beginning and ending dates of service);
- contractor's name, payee/vendor identification number, and address, including zip code;
- NIGP Class and Item number;
- Purchase Category Code (see Section 2.47 Purchase Category Codes (PCC));
- Include the contract precedence on the Notice of Award or Purchase Order:
  - (1) this Notice of Award or Purchase Order, with Listing of Awarded Items;
  - (2) the original solicitation documents, as modified by addenda;
  - (3) the Proposal submitted by your company as modified by any Best and Final Offer.
  - (4) the Assumptions and Exceptions as agreed upon by the agency and the contractor.
- Listing of awarded items with quantity, unit of measure, and unit price with extended totals
- signature of authorized/certified purchasing representative.

### **Internet Sources:**

<http://www.cpa.state.tx.us>

<http://www.cpa.state.tx.us/taxinfo/coasintr.html>

[tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us)

## **SECTION 2.31**

### **Inspection, Testing & Acceptance**

#### **Testing**

All goods are subject to inspection and testing by the state. Authorized agency personnel shall have access to a contractor's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by request of the agency or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the costs of the sample used and any testing performed shall be borne by the contractor.

Goods which have been delivered and rejected in whole or in part may be, at the state's option, returned to the contractor at contractor's risk and expense or disposed of in accordance with TPASS rules or applicable statutes. The contractor may request that goods be held at contractor's risk for a reasonable period of time for later disposition at the contractor's expense.

Latent defects may result in revocation of acceptance of any product.

TPASS may also arrange for testing and inspection of goods and services before they are purchased. Other state agencies may test and inspect goods and services before purchase under standard industry testing methods, or they may contract for testing. TPASS may inform agencies and vendors about available private testing facilities.

To request an inspection contact the TPASS Contract Management Office at [tpass\\_cmo@cpa.state.tx.us](mailto:tpass_cmo@cpa.state.tx.us)

If an ordering entity experiences any problem with a commodity on term contract at any time, it should immediately report the problem to the TPASS Contract Management Office.

#### **Shipment Inspections**

Agencies must inspect all shipments received against orders and report any discrepancies to the contractor and, when required, to the carrier/transportation company. A contractor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

Check the manifest or bill of lading to confirm the correct numbers of containers/packages specified have been delivered. When possible, note shortages on the carrier's shipping documents prior to the departure of the driver and on all other receiving documents required by the agency.

If the items on the manifest do not match the PO, the shipment may be refused or, if accepted, immediately contact the contractor for instructions for handling the incorrect items.

For assistance in resolving issues for orders processed through the TPASS TxSmartBuy; Managed or a One-Time Open Market contracts, contact the TPASS Contract Management Office at [tpass\\_cmo@TPASS.state.tx.us](mailto:tpass_cmo@TPASS.state.tx.us)

### **Damages:**

Upon delivery examine the outside of the containers for damage:

- **No Visible Damage**  
If there is no visible damage, accept the shipment and maintain a copy of the manifest/bill of lading with the receiving document.
- **Minor Visible Damage**  
Record any damage to the shipping containers on the carrier's shipping document and ensure that it is signed by the delivery person before the shipment is accepted. Recording minor damages to containers provides added documentation in the event that there is concealed damage.
- **Severe Visible Damage** The process for severely damaged containers differs depending on whether the order was shipped F.O.B. Origin or F.O.B. Destination. See the Carrier Shipping Terminology heading below for more information on F.O.B.

For **F.O.B. Destination**, if the shipping containers are damaged enough that it is probable that the contents are also damaged, you may:

- Reject the entire shipment
- Accept the entire shipment
- Accept part of the shipment and reject the damaged containers

TPASS strongly recommends accepting the entire shipment or accepting a partial shipment with rejection of the damaged containers to prevent unnecessary delay of required goods. If all or part of the shipment is accepted, contact the contractor to obtain replacement instructions for the damaged items. If the contractor abandons the merchandise (fails or refuses to pick it up), consult your agency's legal counsel regarding disposition.

If the entire shipment is refused, record the reason for refusal on the carrier's shipping documents and notify the contractor that the shipment was refused and needs to be reshipped due to severe damage.

For **F.O.B. Origin**, if the shipping containers are damaged enough that it is probable that

the contents are also damaged, accept the shipment and then record the damage on the carrier's freight bill. Your agency is responsible for filing freight claims with the carrier.

- **Concealed Damages**

It is critical to immediately inspect all containers for exterior and/or concealed damages and make notations. Concealed damage may not be evident and will be discovered after unpacking the containers. The carrier and the contractor must generally be notified within 15 days of receipt to be held responsible for concealed damages, however this can be modified by the agency or the respondent through the contract.

### **Complete the Receiving Report**

Generate a complete receiving report in accordance with your agency's specific receiving procedures following these best practices.

Retrieve a copy of the PO or receiving document. If the document cannot be located, contact your purchasing department to verify that the shipment is intended for your agency and continue the receiving procedure. If you are certain that the shipment is not intended for your agency, refuse the shipment.

### **Compare the Shipment to the Purchase Order (PO) or Receiving Document**

Locate the purchase order number on the shipping documents and after immediate inspections of the shipment and after the containers are opened, check the following against the PO:

#### **Quantities and Unit of Measure**

Compare the quantity and unit of measure and note any shortages or overages.

#### **Quantity Overages**

An agency is not obligated to pay for amounts over the stated quantity on the order unless they are allowed in the terms and conditions of the contract. If overages are accepted by the agency, a Purchase Order Change Notice should be processed.

An example of overage allowances is printed products. Customarily, there is an allowance for up to 10% over or under in a delivery and it is at the discretion of the agency to accept.

#### **Quantity Shortages**

Contact the contractor immediately to determine if the shortage is to be considered a partial shipment. Provide a written request with a timeline for the balance to be delivered. The contractor cannot be held responsible for shortages not reported within 15 days from receipt. If by mutual agreement the shortage is considered complete, a Purchase Order Change Notice should be processed.

#### **Items Ordered**

Compare the following with those listed on the PO or receiving document with the packing slip:

- Detailed descriptions
- Brand name and model number received with the brand name and model number on the PO or receiving document.

Record all discrepancies on the packing slip and/or the receiving document and immediately inform the agency purchaser or contract manager.

A contractor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

Substitutions are only acceptable if they are pre-approved by the agency.

**Inside Delivery:** If the PO specifies “Inside Delivery,” it is the sole responsibility of the contractor to deliver to the exact floor and room number on the PO. If there is a problem, contact the contractor immediately.

**Pallets:** If the PO requires the shipment to be palletized but is not, contact the contractor and request it to palletize the shipment at the agency location at no additional cost. If the agency agrees to accept the non-palletized shipment and additional charges are on the purchase order, process a Purchase Order Change Notice and forward to your Accounts Payable, making a notation for accounts payable to exclude the charges from the payment.

### **Resolve Discrepancies**

The role of the agency’s purchasing department is to:

- Document discrepancies
- Notify the contractor of the discrepancies in writing and follow up telephone notifications in writing to include instructions on what action the contractor should take and the deadline for that action. Give the contractor the opportunity to make the shipment good.
- Without exception, payment should not be made on individual line items until they meet all specifications.
- If there is a shortage, notify the contractor in writing and have it ship the items at its expense or by mutual agreement consider the order complete and process a Purchase Order Change Notice.

## Section 2.32

### Contract Administration

The complexity of contract administration will depend on the type of contract. Contract administration is a critical element in the procurement cycle and must be carried out in all public purchasing operations.

#### **Damages for failure to perform**

A contractor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state. If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found not to comply with specifications, no payment may be approved by TPASS for such merchandise until the amount of actual damages incurred has been determined. A contractor who fails to pay damages assessed by the state may not be awarded additional contracts until such damages have been paid or the matter has been otherwise resolved. TPASS shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations for orders issued by TPASS.

#### **Vendor Performance**

TPASS administers a Vendor Performance Program for use by all ordering entities (see Section 2.36 Vendor Performance). This program relies heavily on the ordering entities' participation in gathering information on vendor performance. 34 Texas Administrative Code § 20.39

#### **Substitutions**

Substitution of items called for in a contract is not permitted without the agency's prior approval. No such approval will be granted unless substituted items are of equal quality and are offered at the same or a lower price.

A substitute brand and/or model may be offered by a contractor when it is unable to deliver the product ordered. The substitution offer must be in writing. The proposed substitution must:

- Meet and/or exceed the original advertised specifications;
- Be of equal quality and type; and
- Be offered at the same or a lower price.

#### **34 TAC Title 34 § 20.39 Contract Administration (a)(3)(b) Substitutions.**

On all TPASS TxSmartBuy; Managed and One-Time Open Market contracts, written approval must be obtained from TPASS before a substitution is permitted. Once a substitution is determined to be acceptable, TPASS sends a written notice to the contractor and the agency confirming that the substitution is authorized. Upon authorization, the TPASS contract and/or ordering system is updated to reflect the substitution.

For delegated procurements, the agency must approve the substitution and send written notice to the contractor. If the substitution is determined to be unacceptable, the contractor will be requested to offer another possible substitution meeting the specification requirements. If the contractor is unable

to supply an acceptable substitution, the purchaser should cancel the item or order, as applicable, and purchase the product elsewhere. Actual damages which include but are not limited to the cost difference in the products and any additional shipping charges may be assessed and charged to the original contractor.

## **Canceling a Contract/Purchase Order**

### ***Delegated Contracts/POs***

#### **Contractor Default**

If a contractor does not meet its contractual obligations, the contract/purchase order may be cancelled. This applies both to individual line items of a PO (purchase order) and to complete POs. A Vendor Performance Report should be filed. (see Section 2.36 *Vendor Performance*).

#### **Other Cancellations**

To cancel an order for any reason other than the contractor not meeting its contractual obligations, obtain the contractor's permission.

### ***Purchase Orders Issued by TPASS***

TPASS-generated POs must be cancelled by TPASS. The same conditions for canceling agency-issued POs apply to TPASS-issued POs. First, either document a contractor's default or obtain the contractor's permission to cancel. Afterward, notify TPASS of your agency's desire to cancel the PO. The notification method depends on the type of purchase:

- **TPASS Term Contract Purchase Order:** Submit a Purchase Order Change Notice to TPASS (see Section 2.35 *Purchase Order Change Notices [POCN]*).
- **Open Market Purchase Order:** Submit written notification to the TPASS Purchaser responsible for the Open Market Contract stating that you wish to cancel the PO.

## **Shipments Resulting from Cancelled Orders**

Agencies are not obligated to accept shipments against correctly cancelled purchase orders. If your agency intentionally accepts such a shipment, reinstate the purchase order (Texas Government Code §2155.384). To reinstate a TPASS Term Contract purchase order, submit a POCN to TPASS (see Section 2.35 *Purchase Order Change Notices [POCN]*). To reinstate an Open Market PO, submit a written request to TPASS to reinstate the PO.

## **Restocking Charges**

### ***Agency-Issued Purchase Orders***

When the contractor is not in default on an order, you may pay a reasonable restocking charge or cancellation fee for canceling that order. Restocking fees should not exceed 15% of the original purchase price. Additionally, the contractor may require you to pay all of the freight charges for the cancelled order.



### **TPASS-Issued Purchase Orders**

The restocking fee guidelines for agency-issued purchase orders apply to TPASS-issued purchase orders. Additionally, restocking charges exceeding 15% of the original purchase price must be approved by the TPASS Purchaser responsible for the Term Contract or Open Market purchase.

Texas Government Code § 2155.384

## **Section 2.33**

### **Expediting & Follow-up**

#### **Expediting**

Expediting is a concept in purchasing and project management for securing the quality and timely delivery of goods and components.

The procurement department or an external expeditor makes sure that the required goods arrive at the appointed date in the agreed quality at the agreed location.

The contractor is required to meet the delivery schedule agreed upon as documented in the contract or purchase order.

#### **Follow-up**

Follow-up is an effort on the part of an agency to ensure that the contractor meets the delivery timeline on the contract or purchase order.

By practicing follow-up, an agency places contractors on notice that orders are being monitored. This usually ensures prompt delivery or notification from a contractor when delivery delays are anticipated.

Follow-up often prevents unnecessary purchase order cancellations due to communication problems between the contractor and the agency.

The purchasing process is complete only when the merchandise is delivered and the contractor is paid.

Suggestions for follow-up:

- Develop an effective system for making timely initial contact with contractors to make them aware that delivery is expected as acknowledged at the time of order.
- Initiate the follow-up process by e-mail, mail or telephone.

- For delivery acknowledgements that take an extended period of time to accomplish, make a second follow-up contact half-way through the delivery period to assure it is still on track.
- Forward copies of all correspondence regarding a late delivery to the appropriate TPASS purchaser.
- Request assistance from TPASS as needed.
- Vendor Performance - Ordering entities shall report the vendor's performance on any purchases over \$25,000 or more from contracts administered by TPASS, or any other purchase made through an agency's delegated authority, or a purchase made pursuant to the authority in Texas Government Code, Title 10, Subtitle D, or a purchase exempt from TPASS procurement rules and procedures. Ordering entities are also encouraged to report vendor performance for purchases under \$25,000 (see Section 2.36 Vendor Performance).

**NOTE:** ALWAYS report performance issues and comments to the Vendor Performance Tracking System to document and advise the TPASS of exceptional performance or problems relating to purchased products or services.

## (Sample Expediting Letter)

Date  
 Ordering Entity:  
 Contractor:  
 Order No.:  
 Requisition No.:  
 Dated:

Sir or Madam:

The referenced order was due (Date). Our records indicate that we have not received this merchandise. We request that delivery be made within ten (10) days from the date of this letter. If delivery cannot be completed, you will need to contact (Purchaser Name) at (Contact Information) immediately regarding the status of this order. Otherwise, we will cancel the order, purchase this commodity elsewhere, and may assess damages as permitted in your contract with (Name of Agency).

Your prompt attention to this matter is appreciated.

Sincerely,

Ordering Entity's Purchaser  
 Phone Number



## Section 2.34

# Shipping - Outbound

### **Introduction**

This section provides a set of suggested, minimal shipping procedures for state agencies. Each agency has unique needs and should adjust these procedures to conform to its particular situation.

### **Outbound Shipments**

#### ***TPASS Term Contracts for Courier and Shipping***

The TPASS offers the following Courier and Shipping Contracts for pickup and delivery of packages within designated areas:

[962-M1 OVERNIGHT, SECOND DAY AND GROUND DXELIVERY SERVICES](#)

[962-A3 COURIER/DELIVERY SERVICE - EL PASO AREA ONLY](#)

[962-M2 COURIER/DELIVERY SERVICE - AUSTIN AREA ONLY](#) (FORMERLY 962-A2)

[962-M5 STATEWIDE FREIGHT CONTRACT – LESS THAN TRUCKLOAD \(LTL\) AND TRUCKLOAD \(TL\).](#)

Check these [contracts](#) occasionally, as other areas may be added in the future.

#### ***Low-Volume Outbound Shipping***

If your agency does low-volume outbound shipping that is not covered by a TPASS Term Contract, attempt to get the best price for this service by using the informal bid process. Price reductions can often be secured by considering optional packaging, palletizing, etc. Simply selecting the correct carrier for the item being shipped often reduces the cost of shipping significantly. For example, some local package delivery services accept shipments up to 100 pounds for a single package. In many cases, smaller carriers offer a rate considerably less than a common carrier's minimum charge for the same shipment. The savings can often equal hundreds of dollars for a single transaction. You may wish to consult a freight broker to help reduce your agency's freight expenses.

#### ***High-Volume Outbound Shipping***

If your agency does high-volume outbound shipping and no TPASS Term Contract meets its needs, solicit a formal bid for an annual contract.

### **Carrier Shipping Terminology**

“Free on Board” specifies when the title for shipped merchandise transfers to the buyer. “F.O.B.”

is often followed by text that specifies which party is responsible for freight charges and damages or losses while in transit. See **Table 1 - Carrier Shipping Methods** for more information.

### **F.O.B. Destination**

Under these terms, the risk of loss of goods does not pass to your agency until the goods are delivered and your agency has accepted the shipment. If the shipment is refused or never reaches its destination, the vendor is responsible for re-shipping new goods at its expense. **TPASS** recommends that all orders be placed as "F.O.B. Destination."

### **F.O.B. Origin**

Under these terms, the risk of loss passes to your agency when the carrier picks up the shipment from the vendor. The ordering entity is responsible for the merchandise at that point. If the merchandise is damaged or lost in shipment, the ordering entity owes the vendor full payment regardless. If there are damages or shortages, the ordering entity is responsible for filing any needed freight claims to attempt to recover the damages. If goods must be replaced, a new order must be placed with the vendor. TPASS does not normally recommend using "F.O.B. Origin."

**Table 1 - Carrier Shipping Methods**

<b>Shipping Method</b>	<b>Carrier Paid By</b>	<b>Freight Listed on PO</b>	<b>Title Held in Transit By</b>	<b>Claims Filed By</b>
F.O.B Origin Freight Collect	Agency	Yes	Agency	Purchasing
F.O.B Origin Freight Allowed	Vendor	No	Agency	Purchasing
F.O.B Origin Freight Prepaid & Charged Back	Vendor	Yes	Agency	Purchasing
F.O.B Destination Freight Collect	Agency	No	Vendor	Vendor
F.O.B Destination Freight Prepaid & Allowed	Vendor	No	Vendor	Vendor
F.O.B Destination Freight Collect & Allowed	Agency	No*	Vendor	Vendor
* Freight charged to vendor by deducting freight charges from invoice				

Texas Business & Commerce Code § 2.601

## Section 2.35

### Purchase Order Change Notices (POCN)

POCNs should not be used if the issuance of a new purchase order would achieve the requested action in a more efficient and economical manner. Only information pertinent to the change itself should be placed in the “Scope of Change” area of the document.

Agencies may utilize their internal POCN for delegated procurements or TPASS Managed contracts. A POCN document is available on the TPASS Web page in the Procurement Forms Library at: [http://www.cpa.state.tx.us/procurement/tools/proc\\_forms/](http://www.cpa.state.tx.us/procurement/tools/proc_forms/)

**NOTE:** POCNs for TxSmartBuy purchase orders must be processed through the on-line system when the quantity is changed.

All purchasers are responsible for using good judgment and proper procedures in processing change notices. Any correspondence necessary for proper documentation of the change, such as cancellation letters and name changes, must become part of the referenced purchase order file.

The POCN shall be used to:

1. Change pricing and/or amounts of a purchase order for a delegated or TPASS Managed contract regardless of the dollar amount.

Add or change items found in the original terms and conditions of the purchase order or contract.

2. Cancel individual items or an entire purchase order.

3. Change quantities. for the whole unit of measure, for increases and/or decreases, over shipments and/or under shipments as defined by the agency’s needs.

4. Exercise options included in the original contract.

5. Reinstate canceled purchase orders. For example, a purchase order is canceled due to non-delivery, but the goods are subsequently shipped by the contractor, and the ordering entity desires to keep the shipment.

6. Change pertinent information such as delivery address or agency contact. A POCN form is also used to document a new serial number for equipment replacement and change incorrect or amended term periods in accordance with the purchase order or contract.

7. Exercise a renewal or extension option in accordance with the terms of the original purchase order or contract prior to the expiration date.

The POCN form ***shall not*** be used to:

1. Change the requisition number unless there was an error on the purchase order.
2. Extend the period of service beyond the expiration date of a purchase order or contract which has expired.
3. Increase a quantity beyond the scope of the contract.
4. Report a vendor's (contractor's) performance, see Section 2.36 *Vendor Performance*.

### **Preparing the POCN**

The following basic information must be included on each POCN form:

Date the form when prepared and/or signed  
Agency Information, Name, Address  
Agency contact information  
Vendor (contractor) ID number, name and address, contact information\*  
Purchase Order or Requisition number\*  
Purchase Order or Requisition date\*

Include in Scope of Change:

NIGP Class/Item codes\*  
Line item number\*  
Description of change - describe the change in a "from" and "to" format  
Agency authorized signature and printed name

\* As shown on the original purchase order.

When applicable, the following information must be included on each POCN for delegated or TPASS Managed purchase orders:

1. If adding a line item, include the NIGP Class/Item code, description, unit of measure, unit price, price extension, and new purchase order total. Include effective date of change and delivery terms.
2. If increasing or decreasing quantities, indicate the line item number, quantity, price extension, and new purchase order total resulting from the change in a "from" and "to" format
3. If canceling all or specific line items of the purchase order (as allowed by contract terms) reduce quantities and adjust purchase order total accordingly.
4. Indicate beginning and ending dates when exercising renewal or extension periods.

### **Distribution**

POCNs issued for delegated or TPASS Managed contract purchase orders are sent to the contractor by the agency.

### **Vendor Performance Tracking**

If the reason for the change is based on the performance of the vendor or the product, enter a Vendor Performance Report. Information is available at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

## **Section 2.36**

### **Vendor Performance**

TPASS administers a vendor performance program for use by all ordering entities per 34 Texas Administrative Code §[20.108](#)). TPASS also administers a Debarment Program (Texas Government Code § [2155.077](#)).

The Vendor Performance Program relies on participation by ordering entities to gather information on vendor performance. Ordering entities shall report vendor performance on purchases over \$25,000 from contracts administered by the TPASS or any other purchase over \$25,000 made through delegated authority granted by TPASS. Ordering entities are also encouraged to report vendor performance for purchases under \$25,000. Please provide supporting documentation for both. The Vendor Performance Form (VPF) is submitted electronically, by the agency, utilizing the TPASS Web Applications Portal. Click on the following link for instructions and access to the form, [Vendor Performance Form](#).

### **Purpose**

- Identify vendors demonstrating exceptional performance.
- Aid purchasers in making a best value determination based on vendor past performance.
- Protect the state from vendors with unethical business practices.
- Identify vendors with repeated delivery and performance issues.
- Provide performance scores in four measurable categories for CMBL vendors.
- Track vendor performance for delegated and exempt purchases.

### **Operations**

TPASS and state agencies or participating coops must document in writing any problems concerning a contractor's performance. Each entity reporting vendor performance is responsible for maintaining all invoices, records, and relevant documentation explaining why the goods or services were not satisfactory. Copies may be requested by the Vendor Performance Coordinator to assist in resolving complaints.



The following recommendations may be implemented by agencies for the maintenance of contract records related to vendor performance:

- Set up an electronic file for each contract administered. Include the following information:
  - Activity log related to the contract. Each time you speak with anyone about the contract, make a note of the date and the subject matter.
  - Copies of any complaints received from end users.
  - Copies of correspondence with the contractor relating to vendor performance issues.
- All letters about nonperformance should be sent by certified mail with copies to all concerned parties.
- Evaluate the contractor. Agencies are required to report vendor performance for purchases over \$25,000 and a Vendor Performance Form (VPF) filed within 30 days after completion of the contract (see Section 4.1 Forms).

### **Reporting Vendor Performance**

When an entity first experiences a relatively minor problem or difficulty with a vendor, the entity will contact the vendor directly and attempt to resolve the problem informally. Minor issues include failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. The vendor is required to reply to the complaint within three (3) working days. Ordering entities should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.

If the vendor resolves the issues satisfactorily, then the agency should file a Vendor Performance Form (VPF) with a satisfactory resolution code. If the vendor fails to respond satisfactorily, the agency will file a VPF with the appropriate unsatisfactory resolution code. The TPASS Vendor Performance Program tracks the complaint and documents the actions taken in the TPASS Vendor Performance Tracking System (VPTS). The [TPASS Contract Management Office](#) is available to work with the entity and the vendor to resolve significant issues. This documentation is used for future evaluations and awards to the vendor when vendor past performance has been listed in the solicitation as one of the "best value" criteria to be used in the awards process.

The steps in the reporting of vendor performance are:

#### **A. Filing a VPF**

- The entity completes a VPF containing all pertinent and available information and submits to TPASS by logging on to the TPASS Web Applications Portal. (<https://portal.cpa.state.tx.us/>). Agency [security coordinators](#) can provide user access to the Portal.

- To file a satisfactory report, use issue code 052 “Inspection – Receiving Agency” to reflect that an inspection was completed and either satisfactory resolution code 205 “Item met specification per inspection” or 208 “Service met specifications” as appropriate. TPASS commences the vendor tracking process once the agency has entered the performance report. TPASS and the ordering entity receive an e-mail copy of the VPF. The vendor address is pulled from the Centralized Master Bidders’ List. Although the VPTS has a feature allowing for e-mail notification of the vendor, the agency must send the vendor a copy of the VPF via fax or postal mail to ensure that the vendor receives the report.

**B. Defer complaint for fourteen (14) calendar days awaiting response from vendor:**

1. If a vendor responds to the VPF contesting the facts in the report, the TPASS Vendor Performance Coordinator will investigate. The Vendor Performance Coordinator will request supporting documentation from the agency and the vendor as a part of any investigation.
2. If vendor fails to respond in the fourteen (14) calendar days, a letter from the TPASS Coordinator is sent via postal mail to the vendor asking for a response to the complaint, with a specific deadline set. If the vendor’s response is received by that deadline, the Vendor Performance Coordinator will resolve the issue. If the vendor does not respond or there is a significant issue requiring further investigation, the TPASS Contract Management Office (TCMO) will work with both the vendor and entity to resolve. If necessary, TCMO will recommend a Correction Action Plan (CAP) or other contractual remedies to Legal. If approved, the CAP or other contractual remedies will be added to the contract in the form of an amendment to ensure compliance.

**C. Upon final determination, the TPASS Vendor Performance Coordinator will complete the VPF and finalize the report in the Vendor Performance Tracking System.**

**Vendor Debarment**

Debarment is an action taken by the Director of Procurement to exclude individuals or firms from contracting with ordering entities for particular types of goods or services for specified periods of time. Debarment does not relieve the contractor of responsibility for existing obligations. The purpose of debarment is to protect the state from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect state interests and the integrity of the state's procurement process by preventing individuals or firms who have displayed improper conduct from participating on state contracts for specified periods of time. The TPASS maintains a [Debarred Vendor List](#) of those firms and individuals that have been debarred. Agencies shall not award state contracts or subcontracting opportunities to debarred vendors.

# Vendor Performance Codes

## DELIVERY ISSUES

(005) Late Delivery
(006) 1st Written notice issued for late delivery
(007) 2nd Written notice issued for late delivery
(008) Failure to deliver
(010) Delivery made at wrong destination

## PERFORMANCE ISSUES

(014) Failure to identify shipments per contract terms	(051) Inspection - Requested (TPASS use only)	(113) Failure to comply with terms/conditions of contract including reverse auction documentation (Give details below)
(016) Short or overweight or count	(052) Inspection - Receiving Agency	(114) Failure to comply with requirements of HUB Subcontracting Plan (HSP) (Give details below)
(018) Vendor shipped incorrect merchandise	(083) Failure to meet specifications (Give details below)	(120) Failure to provide proof of insurance or maintain insurance
(020) Failure to replace damaged goods	(085) Poor product quality	(121) Failure to provide report(s)
(021) Slow replacement of damaged goods	(087) Failure to respond to letter, phone call, or email	(122) Misrepresentation of qualifications (Give details below)
(022) Failure to pick up incorrect shipment	(090) Poor customer service (Give details below)	(123) Falsification of/fraudulent submittals (Give details below)
(023) Improper product packaging	(091) Unauthorized substitution	(124) Failure of workforce to meet specifications
(024) Failure to follow palletizing instructions	(095) Failure to supply performance bond within required time	(125) Incorrect allocation of work (Give details below)
(038) Poor product performance	(100) Unsatisfactory installation	(126) Failure to respond to emergencies as required (Give details below)
(040) Failure to promptly notify TPASS/Agency/Co-op Member concerning manufacturer discontinuation of an item	(102) Service not performed within specifications	(127) Failure to close out project as specified
(042) Repair parts not available	(110) Incorrect invoices	(128) Certification not received on time
(050) Inspection - Random (TPASS use only)	(111) Failed inspection (TPASS-use only)	(129) Failure to comply with code of conduct as specified
		(130) Other (Give details below)

## **RESOLUTION CODES**

<b>Satisfactory Resolution Codes</b> <b>Does not negatively affect the score(s)</b>	<b>Unsatisfactory Resolution Codes</b> <b>Negatively affects the score(s)</b>
(202) Complaint withdrawn (Give reason below)	(201) Late Delivery
((205) Item met specification via inspection	(206) Vendor failed to receive purchase order on time
(207) Delivery made after vendor was notified	(211) Damages Assessed
(208) Service met specifications	(213) Failure to pay assessed damages
(209) Performance corrected	(225) Shipment rejected (Give reason below)
(210) Material or item replaced	(228) Item canceled from contract (Vendor failure-vendor initiated)
(212) Equipment performance corrected	(229) Item canceled from contract (Vendor failure-state initiated)
(217) Performance bond received	(235) Entire contract canceled (Vendor fault)
(220) Invoice corrected	(237) Damages paid
(230) Item canceled from contract (No fault of vendor)	(253) Performance not corrected, TPASS action taken (TPASS use only - give reason below)
(234) Item/entire order canceled	(262) Order not complete (Give reason below)
(236) Entire contract canceled (No fault of vendor)	(263) Manufacturer fault (Give reason below)
(249) Order completed	(264) Resolved and documented (Vendor fault -give reason below)
(251) Correct shipment received	(265) Substitution not approved by awarding agency
(255) Substitution approved by awarding agency	(266) Item/entire order cancelled (Vendor fault)
(256) Insurance requirements received	(267) Delivery not corrected by vendor
(258) Certification received	(268) Hub Subcontracting plan rejected
(259) Resolved and documented (No fault of vendor - Give reason below)	(269) Failure to provide required documentation (vendor fault)
(260) Vendor failed to receive purchase order on time(Agency or postal fault)	(270) Vendor Failed to Respond to Complaint
(280) Green - No current issues - submit and print report (TPASS use only)	(281) – Yellow - Solution within division - give impact and detail explanation below (TPASS use only)
(299) Other (Give reason below)	(282) – Red Light - "Red" - Escalated outside of division - give impact and detail explanation below (TPASS use only)
	(298) Other (Give reason below)

## **EXCEPTIONAL PERFORMANCE**

(301) Shipment made early upon agency/co-op member request
(303) Product upgrade substitution suggested and accepted at no additional cost to the agency
(305) Exceptional customer service response
(307) Exceptional service provided for return of products
(309) Provided technical/training/set-up assistance when not required
(311) Voluntary Price reduction for large order
(399) Vendor commended

## Section 2.37

# Payment Assignments

### Assignment

An assignment is the legal transfer of a right or property. In business an assignment is usually the transfer of the right to receive payment. An assignment involves at least two parties: the assignor and the assignee. The assignor is the party transferring the right to receive payment. The assignee is the party receiving the right to receive payment.

Once an agency receives a notice of a financial assignment, it is legally bound to make payment to the assignee. Assignments may be requested by the contractor to show changes in the payee on an order. Requests for assignments must be in writing from the contractor receiving the order on the **company letterhead with the signature of an authorized representative**. Issue an assignment letter acknowledging the assignment. The vendor identification number (VID) will remain that of the original awarded contractor, but the contractor name and payments will be mailed to the assignee. Refer to the [TINS Guide](https://fm.x.cpa.state.tx.us) "*How to set up Assignments.*," at <https://fm.x.cpa.state.tx.us>.

### Delegated Purchases

When a payment assignment is requested on a delegated purchase, the agency must receive a letter from the original awarded contractor assigning the order to the new contractor and a letter from the new assignee noting acceptance of the assignment. Once these letters have been received, then the form letter for Purchase Order Assignment (see below) may be used. Any reference to a TPASS order number should be deleted. A copy of this notice should be maintained in the procurement file.

The agency is responsible for setting up, in TINS, the assignment mail code for the VID number of the original contractor so that the payment may be processed.

### TxSmartBuy and TPASS Managed Contracts

The TPASS Contract Management Office (TCMO) is responsible for processing assignments for TxSmartBuy or Managed contracts. Agencies are required to inform contractors to contact the TPASS Contract Management Office.

### Company Name Changes

Any name change requires documentation from the original contractor on company letterhead stating the circumstance of the name change and the new name. The letter should be signed by an authorized representative, showing the change and the effective date. A copy of the assumed name certificate filed with the Secretary of State or a sales tax permit may be obtained as proof

of name change. Issue a letter amending the PO to change the name and advise the company to contact the Comptroller's Office to set up a new VID in order to secure payment. The purchaser should change the name on the PO file copy and acknowledge the name change.

### **Buyout or Sale**

A Buyout or Sale occurs when one company is purchased by another. The contractor of record needs to have the purchase order/contract amended to receive payment when the order is completed. An agency must secure a letter from the original vendor stating the circumstances of the buyout/sale. If the contractor is already out of business, the agency should then obtain a letter indicating the sale of the company to the new contractor. Then issue a letter amending the purchase order/contract to change the name. Advise the new contractor to contact the Comptroller to obtain a new VID in order to secure payment.

### **Authority to Assign**

Generally, a person may assign the right to receive a payment from the state in the same way that a person may assign the right to receive a payment from a private person or entity. Reference [eXpendit State Purchase Policies](#), select the “Miscellaneous” tab, [Payments and Fees for Assignments of Payment from the State](#).

Questions should be directed to the Comptroller of Public Accounts, Claims Division, at (512) 463-4850.

## **Section 2.38**

# **Prepayment and Advance Payments**

Follow the guidance outlined in the TPASS [eXpendit State Purchasing Policies](#) for [Advance Payment and Penalties](#) under the Restricted Expenditures tab, “Early and Late Payments.”

A state agency must retain documentation in its files explaining the necessity and proper public purpose of an advance payment. A state agency may not pay for goods or services before their delivery to the agency unless the advance payment is necessary and serves a proper public purpose. Specific exceptions to this prohibition are:

- **Books** - An institution of higher education may pay for books and other published library materials before receiving them if reasonably necessary for the efficient operation of the institution’s libraries. Books and published library materials are the only items that may be paid for in advance with higher education assistance (HEA) funds.
- **Cost Savings** - A state agency may make an advance payment if significant cost savings would result from making the payment in advance. For help in determining cost savings, please utilize the [Discount Cost Effectiveness Calculator](#) on the Fiscal Management Extranet (FMX) website of the Comptroller’s office.

- **Expedited Delivery** - A state agency may make an advance payment to a federal agency or another state agency for goods purchased from the agency, if the advance payment will expedite delivery of the goods.
- **Lease Costs** - An advance payment of annual lease costs for office or building space can be made by the Texas Facilities Commission (TFC) acting on behalf of a state agency if an early payment discount can be obtained.
- **Leased Space** - A state agency may pay rent for leased space no more than seven days before the payment due date.
- **Purchase of Real Property** - The Comptroller's office will process a purchase voucher for the purchase of real property anytime during the seven days before the closing date if the agency submitting the voucher agrees not to deliver the warrant to the seller until the closing date.
- **Rent** - TFC may make an advance payment of rent for a distribution center, an office space or another facility required to accomplish TFC's functions.
- **Specialized Goods/Services** - A state agency may make an advance payment to a vendor selling specialized or proprietary goods or services to the agency if the vendor requires the payment to be made in advance.
- **Subscriptions** - A state agency may pay the cost of a periodical subscription a maximum of six weeks before it begins.
- **Tuition** - A state agency may pay tuition directly to an institution of higher education not earlier than six weeks before the class begins. However, a state agency may not reimburse a state employee for tuition before the class begins.

The Comptroller's office may request additional information to justify any advance payment, including an advance payment that would be made under the circumstances listed above.

A state agency that makes an advance payment to a vendor is responsible for:

- Ensuring that the vendor provides the good or service to the agency.
- Pursuing appropriate legal remedies to recover the payment if the vendor fails to provide the good or service.

Source:

Texas Education Code Section 62.021(a); Texas Government Code Section 2113.001(2); State Purchasing and General Services Act, Texas Government Code Sections 2151.003(1), 2155.383, 2155.386, 2175.001(1-a), 2175.368(2); Article IX, Section 11.07(a) of the General Appropriations Act. Opinion of the Texas Attorney General No. MW-55 (1979).

## Penalties

A state agency may only pay a penalty when a valid federal law or regulation requires the payment. In the absence of a federal law or regulation requiring the payment of a penalty, a penalty assessed is not payable because its payment is considered extra compensation.

## Section 2.39

### Discounts for Prompt or Early Payments (Prompt Payment Act)

Follow the guidelines outlined in the TPASS [eXpendit State Purchasing Policies](#) for [Discounts for Prompt or Early Payment](#) under Miscellaneous, Payments and Fees.

A [state agency](#) must negotiate a prompt [payment](#) discount with a vendor when possible. To take advantage of a prompt or early payment discount, a state agency must submit the necessary payment documents or information to the Comptroller's office sufficiently in advance to allow the Comptroller's office or the agency to pay the [vendor](#) in time to obtain the discount.

An early payment discount (also referred to as a cash discount) is a discount offered to the agency for early payment. An offer for an early payment discount, such as “2/10 net 30” (a 2% discount if the bill is paid within 10 days instead of 30) may be considered in making an award. Example: Contractor offers 2/10 Net 30. A customer can take the 2 percent discount if it pays before or by the 10th day. Financial accounting demonstrates that 2/10 net 30 is equivalent to approximately 36 percent rate of return; hence even 1/10 net 30 translates into approximately 18 percent rate of return. Texas Government Code Sections 2251.001(2), (4), (7)–(8), (10), 2251.030(a), (d).

## Section 2.40

### Late Payments (Prompt Payment Act)

**Reference the CPA [eXpendit State Purchase Policies, Miscellaneous Expenditures, Payments and Fees, Prompt Payment Law](#)**

#### **Payment Deadline**

A state agency's payment under a contract executed on or after September 1, 1987 is overdue by the **31st** day after the later of the following:

- the date the agency receives the goods and/or services in accordance with the contract;
- the date the agency receives a correct invoice for the goods and/or service.

A state agency is liable for any interest that accrues on an overdue [payment](#) under the [prompt payment law](#). The interest must be paid at the same time the principal is paid. Interest starts accruing on the date the payment becomes overdue.



The interest rate the state pays on a late payment to a vendor under the state's prompt payment law is calculated on an annual basis. The interest calculation is one percentage point higher than the prime rate published in The Wall Street Journal on the first business day of July.

The Comptroller's office may:

- Require a state agency to submit any information necessary to determine compliance with the prompt payment law, or
- Require an agency to change its accounting systems or procedures in accordance with the law.

Source: Texas Government Code Sections 2251.025–2251.026

### **Disputes Between State Agencies and Contractors**

A state agency that considers an invoice from a contractor to be incorrect must notify the contractor not later than the 21st day after the date the agency receives the invoice.

If a dispute between a state agency and a contractor is resolved in the contractor's favor, the agency is liable to the contractor for interest on all invoices for which the vendor has not received payment. This interest must be calculated from the original due date of the payment, as if no dispute ever existed.

If a dispute between a state agency and a vendor is resolved in the agency's favor, the vendor that submitted the original invoice must submit a corrected invoice to the agency. Interest starts accruing if the corrected invoice is not paid by the appropriate date.

Source: Texas Government Code Section 2251.042

### **Calculation of Interest:**

#### **Prompt Payment Interest Calculator**

#### **Prompt Payment Due Date and Interest Calculator**

This is an example of how to calculate interest under the prompt payment law. In this example, the following assumptions apply:

- A state agency signs a contract with a vendor on Sept. 10, to purchase goods from the vendor.
- The goods are received on Sept. 24.
- The agency receives the vendor's invoice on Oct. 6.
- The distribution date for the payment is Dec. 9.
- The amount of the agency's payment is \$500.00.
- The Comptroller's office is responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount owed by the agency.
  1. Determine the due date for the payment. Start counting the 30 days beginning on the day after the agency receives the invoice. In this example, the due date is Nov. 5.

2. Next, determine how many days the payment is late. Start counting on the day after the due date and stop counting on the payment's distribution date. In this example, the payment is late by 34 days.
3. Now use the following formula to determine the amount of interest due:  
$$(\# \text{ of days late} / 365) \times (\text{applicable prompt payment interest rate}) \times (\text{amount of payment}) = (\text{interest due}).$$

## Exemptions

The requirements described in this section do *not* apply to a payment made by a state agency if:

- The terms of a federal contract, grant, regulation or statute prevent the agency from making a timely payment with federal funds; or
- The invoice is not mailed to the agency in strict compliance with the instructions, if any, on the purchase order relating to the payment.

No interest accrues or may be paid on a payment if:

- The payment is made from the institutional funds of an institution of higher education, and
- the total amount of interest that otherwise would have accrued is equal to or less than \$5.

Source:

Texas Government Code Sections 2251.002(a)(3)–(4), 2251.026(j). 1 Texas Administrative Code Section 114.7 (2003) (rule of the comptroller); 16 Texas Administrative Code Section 25.480(c) (2003) (rule of the Public Utility Commission of Texas about interest payable to certain retail electric providers); 40 Texas Administrative Code Section 19.2604(h) (2003) (rule of the Texas Department of Human Services saying that the department, under certain circumstances, owes no interest on payments not made by the deadline provided in the prompt payment law). Opinion of the Texas Attorney General No. GA 302 (2005) (a governmental entity may not consent to a provision in a contract with a private person that the laws of another state apply instead of the Texas prompt payment law). Opinion of the Texas Attorney General No. GA-429 (2006) (an implied contract subject to the Texas prompt payment law exists between a public school district and a municipally owned utility).

## Waiver

A person may not waive any right or remedy described in this section if the right or remedy is granted by Chapter 2251, Government Code. A purported waiver of any right or remedy granted by that chapter is void.

Source: Texas Government Code Section 2251.004.

## Section 2.41

### Deposits

A number of consumable products are sold either packed or stored in reusable containers. Often a separate container deposit is required. TPASS does not consider these charges in its evaluation if the total deposit is to be refunded upon return of the container.

TPASS will show the deposit amount on the purchase order. Return transportation will also be included in the original purchase price, unless otherwise shown on the purchase order or contract notice.

The agency should return the container and collect the deposit. When submitting payment through the USAS system the deposit should be referred to as "**demurrage**" (per the Comptroller of Public Accounts, Claims Division). Listed below is sample language used in TPASS bid specifications for deposits:

**"If returnable \_\_\_\_\_ is bid, please quote \_\_\_\_\_ deposit separate from the price of the above material. The \_\_\_\_\_ deposit is to be refunded to the (agency) upon return of the \_\_\_\_\_ for \$\_\_\_\_\_. The \_\_\_\_\_ may be picked up by the vendor or it will be returned freight collect."**

## Section 2.42

# Taxes, Fees, Surcharges

### State and Local Taxes

The State of Texas is exempt from paying certain taxes such as state and local (City, Transit Authority, etc.) sales tax (Texas Tax Code §151.309 (4)). During the solicitation process, the agency shall notify the bidders that purchases made for the state are not subject to Texas sales tax. Taxes of other states are not applicable if F.O.B. destination in Texas is specified.

Suggested language for solicitations:

**“Purchases made for state use are exempt from the Texas state sales tax, and certain purchases are exempt from federal excise tax.”**

In addition, TPASS recommends that a tax exempt statement appear on the front of each purchase order.

In situations where solicitations require both labor and materials, the state is exempt from the tax paid by the contractors on behalf of the state for the incorporated materials they supply when performing a labor and materials contract job. The contractor must ALWAYS pay the tax unless the materials will be used entirely for the state's project. Contractors must pay tax on the purchase and rental of equipment, accessories and repair or replacement parts for equipment (Texas Tax Code §151.311).

### Federal Taxes

The state of Texas is exempt from paying federal excise taxes for specified commodities. Suggested language for solicitations if applicable:

**"Generally, the State of Texas is exempt from Federal Excise Taxes. However, the State of Texas is not exempt from Federal Excise Taxes for certain purchases, i.e. vaccines."**

### Taxes, Fees and Surcharges Paid by the State

**Telecommunication Services** - Current information regarding taxes, fees, and surcharges on telecommunication services is available on the Department of Information Resources' Web site.

**State Motor Fuels Tax** - Agencies are required to pay the state motor fuels tax on gasoline and diesel fuel. However, agencies holding either a Dyed Diesel Fuel Bonded User permit or Dyed Diesel Fuel Signed Statement registration are not required to pay the state motor fuel tax on dyed diesel fuel purchased for use in off-highway equipment. State agencies may request a refund of state motor fuels taxes paid on gasoline and diesel fuel used in off-highway equipment. Agencies should contact TPASS for information on obtaining a diesel fuel permit or requesting a refund.

**Tax Exemption Certificates**

State and Federal Tax Exemption Certificate forms are available in the [Procurement Forms Library](#) on the TPASS Web site.

**Legal Authority:**

Texas Tax Code §151.309 (4)

Texas Tax Code §151.311

## Section 2.43

### Paying for Purchases

The payment of invoices for purchases is processed through the [Uniform Statewide Accounting System \(USAS\)](#).

Transactions (vouchers) for payments must be handled in accordance with the Comptroller of Public Accounts' [eXpendit State Purchase Policies](#); the [USAS Policies and Procedures Guide](#) and the [USAS User's Manual](#).

For assistance with USAS, [Purchase and Travel Directory](#) provides the primary and backup contact for each state agency.

#### **TPASS Requirements:**

In addition to the fiscal data for payments processed through USAS, the following elements are required on the purchase requisition or purchase order for payment processing and Procurement Review audit:

- NIGP Commodity Class and Item Number;
- Order/Estimated Delivery Date or Term of Contract;
- Authorized Purchasing Representative Signature.

**FUNDING:** The following statement is required on the purchase order if a purchase or service transcends a biennium: **"This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature."**

#### **Contractor Invoices**

To receive payment, contractors must submit an invoice which should include, but is not limited to:

- contractor's mailing and email (if applicable) address;
- contractor's telephone number;
- name and telephone number of a person designated by the contractor to answer questions regarding the invoice;
- state agency requisition, purchase order or contract number;
- state agency's name, agency number, and delivery address;
- valid Texas identification number (TIN) issued by the Comptroller of Public Accounts;
- description of the goods or services, in sufficient detail to identify the order relating to the invoice;
- quantities and unit of measures corresponding with the referenced order

Legal Authority: 34 Texas Administrative Code §5.210

## **Section 2.44**

# **Fiscal Year-End Procedures**

### **Comptroller of Public Accounts (TPASS) Fiscal Year-End Determination**

The state fiscal year begins on September 1st and ends on August 31st of each year. State funds are appropriated by the Texas Legislature on a biennial basis. TPASS establishes guidelines and rules for how and what money is charged to a specific fiscal year.

When submitting a request for payment, the agency must designate which fiscal year will be charged for the purchase. This is necessary because three appropriation years (five for construction, repair, or remodeling appropriations) are always available to be charged for any purchase.

There are different criteria for payments of consumables, services, capital assets, and mixed purchases. The general requirements below reflect current TPASS policies and procedures. For further clarification, refer to your fiscal office or TPASS's Texas Purchase Policies and Procedures Guide

### **Consumables**

An agency must charge a purchase of consumables to the appropriation year in which the delivery of the consumables occurred and in which they are reasonably expected to be consumed.

### **Services**

An agency must charge a purchase of services for the appropriation year in which the services were rendered.

### **Capital Assets**

Capital assets are real or personal property that have an estimated life of greater than one year. When an agency purchases a capital asset, the entity may charge the purchase to any appropriation year or combination of appropriation years that are in existence on the date that the agency enters into the purchase contract. The delivery date of a capital asset is never a relevant factor when determining the appropriation year that must be charged for the purchase of the asset.

### **Mixed Purchases**

Mixed purchases may involve the purchase of a combination of consumables, services and capital assets. The appropriation year principles are determined by the dominant purpose of the contract. For example, if the dominant purpose of the mixed contract is to purchase services, then the appropriation year determination principles for services would govern the entire purchase.

## **Exceptions to the Appropriation Year Determination Procedures**

### **Seminars and Conferences**

Except as discussed in the next sentence, a state agency may use money appropriated for a particular fiscal year to pay expenses related to conducting or attending a seminar or conference only to the extent it occurs during that fiscal year. To the extent that it is cost-effective, a state agency may use money appropriated for a particular fiscal year to pay expenses related to conducting or attending a seminar or conference that will occur partly or entirely during a different fiscal year.

### **Periodical subscriptions, maintenance contracts, post office box rentals, insurance, and surety or honesty bonds**

A state agency may use money appropriated for a particular fiscal year to pay the entire cost or amount of a periodical subscription, a maintenance contract, a post office box rental, insurance, or a surety or honesty bond, regardless of whether it covers more than one fiscal year.

### **Utility Services**

A state agency may use money appropriated for a particular fiscal year to pay for a utility service provided during that fiscal year and September of the next fiscal year. The applicable statute specifically defines “utility service” to mean:

- The furnishing of electricity, water, or natural gas; or
- A telecommunications service, a wastewater treatment services, or a waste disposal service; or
- Any similar commodity or service that the Comptroller considers to be a utility service.

Additional information is provided in the TPASS Texas Purchase Policies and Procedures Guide

**Note:** See Section 2.38 Prepayment & Advance Payments for allowable advance payment exceptions.

## **TPASS Procedures for Open Market Fiscal Year-End Purchases**

See Section 2.7 Open Market Purchases

### **Funds Which Revert**

Entities may have appropriated funds which revert to the state's fund at the end of the fiscal year. If an order is to be paid with funds which revert at the end of a fiscal year, the agency should note on the requisition **"To be paid with funds which revert at the end of this fiscal year."**

Requisitions requiring delivery on or before August 31st must include a similar notation. Requisitions with either of these notations will be given priority for processing. The TPASS deadline for receipt of open market requisitions is approximately eight to ten weeks prior to the end of the fiscal year. Current fiscal year requisitions received after this deadline will be processed only if TPASS determines there is sufficient time to process the purchase order.



### **Next Fiscal Year Funds**

For requisitions to be paid with funds from the next fiscal year, the agency should note the following on the requisition:

- New fiscal year requisition number; and
- The statement: "**Goods are to be Delivered and Invoiced after September 1, 2XXX.**"

### **TPASS Procedures for Re-Award of an Order Using Prior Fiscal Year Funds**

This procedure involves the cancellation of a purchase for capital assets. A purchase order using prior year funds is allowed when a prior year order is canceled for reasons which are not within the control of the agency or TPASS, such as a vendor's default for inability to deliver, meet performance or specification requirements. Please note the following:

If it is necessary to cancel and re-award an order for a capital asset item, the agency shall request and justify the action as being in the best interest of the state. TPASS:

- May cancel and re-award the order or cancel and re-advertise the purchase (as appropriate for the situation); and
- Will use the original requisition number and issue a new purchase order number for the previous fiscal year with the current date.

Since the original purchase order was executed in the prior fiscal year, the agency may use prior fiscal year funds to pay for the purchase. If the amount of the re-award exceeds the amount of the original award, the difference will be charged to the current year's appropriations. See Section 2.18 *Excess Obligations Prohibited* for information on excess obligations.

## Section 2.45

### The State Payment Card PCC - H

An overview on the [State of Texas Charge Card Program](#) for procurement and travel is available through the TPASS Web page.

#### **Introduction**

State agencies may only use credit cards issued under the TPASS Term Contract No. [946-M1 PAYMENT CARD SERVICES](#).

#### **Instructions for Participation in the Payment Card Services Contract**

1. Adopt procedures governing the issuance and security of payment cards and the use of those cards by the agency's officers and employees. TPASS requires these procedures as a part of the procurement audit review.
2. File and maintain these procedures in the agency's Procurement Plan and forward to mark.kaspar@TPASS.state.tx.us.
3. An overview on the [State of Texas Charge Card Program](#) for procurement and travel is available through the TPASS Web page.

#### **Using the Payment Card**

The payment card may be used to pay for the purchase of commodities and services for dollar amounts within an agency's delegated purchasing authority.

1. Agency/Cardholder Responsibilities: Adhere to all purchasing statutes, rules, policies, and procedures when using the payment card. *The use of a payment card does not automatically exempt a state agency, its officers or its employees from any purchasing requirement of state law or TPASS<sup>5</sup>.*
2. Procurement File or Log: A file or log must be maintained for each card transaction and must include the NIGP Class/Item code(s) and best value determination.
3. Receipts: Keep each payment card transaction receipt in the procurement file. Each receipt must contain a description of the good or service sufficient to support TPASS's expenditure object code used for the type of items being purchased. Credit card receipts must be made available to TPASS upon request.
4. Capital or Controlled Assets: The payment card may be used to pay for capital or controlled assets, utilizing the expenditure object code established for the type of assets being purchased. The Texas Identification Number/Payee Identification Number/Vendor Identification

(TIN/PIN/VID) of the selling vendor must be entered into USAS, rather than the TIN/PIN/VID of the state credit card issuer.

### **Prohibited Uses of the Payment Card**

Per [Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section 5.57\(g\)](#), a participating state agency may not use a payment card and may not reimburse an officer or employee for the use of a payment card for:

- A purchase of a personal nature or any other purchase not connected with official state business.
- A cash advance.
- A purchase of a consulting service.
- A purchase of a good or a service that may not be purchased without the prior approval of another state agency.
- A purchase that the office of the Texas Comptroller of Public Accounts audits before payment.
- A purchase from a vendor if a payment to the vendor is prohibited by:
  - Government Code [§403.055](#) or [§2107.008](#).
  - Education Code [§57.48](#), or [§57.482](#).
  - Family Code [§231.007](#).

Furthermore, a participating state agency may not use a payment card and may not reimburse an officer or employee for the use of a payment card for:

- A purchase that violates any provision of the General Appropriations Act regarding the occurrence of excess obligation provisions.
- The purchase of automotive fuel. The Council on Competitive Government (CCG) Contract [946-35 Retail Fuel Card](#) shall be used.

### **Payment to the Payment Card Issuer**

State agencies are required to pay the payment card contractor through an electronic funds transfer. Payment or credit card statements are to be paid in full, less credits or disputed transactions, within 30 days of receipt, per the Texas Prompt Payment Act. A state agency *may not accept a cash refund* for a purchase if the agency paid for the purchase with a payment card.

Information regarding the Fiscal Policy and Procedure (FPP) *,Processing Third Party Transactions in USAS for Payment/Travel Cards, Direct Bill Payments and Reimbursements*, is available at: <https://fm.x.TPASS.state.tx.us/fmx/notices/fm05/43/index.php>

### **Liability Requirements**

State agencies may be liable for late payment fees and transactions charged to lost and stolen cards if lost or stolen cards are not reported immediately. Customers will have no liability for transactions that occur after notification of a card being lost or stolen. For unauthorized charges made prior to the card being reported lost or stolen, Customer's liability is limited to a maximum of \$50 per card (up to \$100,000).

### **Historically Underutilized Business (HUB) Reporting**

The payment card contractor develops HUB reports to provide state agencies with the payment card transaction data for HUB vendors to assist in preparing statewide HUB reports. Instructions for generating HUB reports from the payment card contractor are available at:

[http://www.citibank.com/transactionservices/home/sa/2010q3/texas\\_mn/docs/TexasHUB\\_Overview.pdf](http://www.citibank.com/transactionservices/home/sa/2010q3/texas_mn/docs/TexasHUB_Overview.pdf).

## **Section 2.46**

### **Action Codes**

#### **TPASS Pre-Audit Action Codes Used for USAS**

<b><u>Code</u></b>	<b><u>Description</u></b>
801	Contract with listed requisition number is not on file at TPASS
802	Proprietary (2155.067) justification needed at TPASS
803	Emergency Justification (2155.137) needed at TPASS
804	CMBL, with HUB information, needed at TPASS
805	No action by TPASS, at agency request
806	Purchase Order needed at TPASS
807	Bid tabulation needed at TPASS
808	Copy of bids needed at TPASS
809	Copy of specifications and/or terms and conditions needed at TPASS
810	Approved - audited by TPASS as document type 3
811	Purchase documents needed at TPASS. See descriptive/legal text (DLT)
812	Payee (VID) not the same as on Purchase Order/Lease
813	Purchase category code (PCC) not correct.
814	Document type not correct.
815	TPASS Term Contract Item - Not a delegated purchase
816	Purchase Contract/Lease expired - See descriptive/legal text (DLT)
817	Payment period (from-to) dates not listed

818	Lease payment for month approved on a previous document
819	Lease payment being held until the 23rd of the month if Due date not used
820	Lease payment amount does not agree with amount on lease
821	Lease amendment not approved or not on file
822	Other - other codes are not applicable - see descriptive/legal text (DLT)
823	TPASS lease number not listed
824	Lease number referenced is not on file

Explanation of action codes is available at USAS Screen D44, Action Code Profile. Questions should be directed to the TPASS Fiscal Management Division

If payment is not approved, the TPASS Procurement Review Auditor will enter the action code and the explanation in DLT. This will be followed up with a telephone call to the agency contact person.

## Section 2.47

### Purchase Category Codes (PCC)

The following Purchase Category Codes (PCC) are for use in the Uniform Statewide Accounting System (USAS) with purchase document types two (2) and nine (9). USAS Documents type two (2) and nine (9) are audited after payment. PCCs are codes used to document the purchase method, commodity type, and dollar category of purchases.

#### PCC List:

**A** - Purchases of items from TPASS term contracts using the TPASS automated purchasing system (Automated purchase orders). See 34 Texas Administrative Code § [20.40](#) - TPASS Term Contract Purchase.

**B** - A purchase with a pre-scheduled bid opening date, allowing TPASS to confirm orders for goods (e.g., calendars, groceries, fertilizer, etc.). see [Section 2.8 on Scheduled Managed Contracts](#).

**C** - Purchases from TPASS Managed term contracts using the agency's internal requisition/purchase order forms See 34 Texas Administrative Code [20.40](#) - TPASS Term Contract Purchase.

**D** – Purchases of information technology commodities or services not available through DIR contracts. TPASS Rule 34 Texas Administrative Code § [20.391](#) – Request for Offer Purchase Method.

**E** - Purchases of commodities and services when the total purchase is estimated to be \$0.00 to \$5,000.00. See TPASS Rule 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**F** - Purchases of commodities (not services) in the total estimated amount of \$5,000.01 through \$25,000.00. See 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**G** - Purchases on the Open Market by TPASS. A purchase of goods, usually in a specified quantity, is made by buying from any available source in response to an open market requisition from an agency. Items are not on TPASS term contract. See 34 Texas Administrative Code §§ [20.33](#) through [20.40](#) - TPASS Open Market Purchase.

**H** - Purchases in any category paid for with a payment card. Agencies using a payment card from TPASS Managed Contract No. 946-M1. See [34](#) Texas Administrative Code [§ 5.57](#)- Delegated Purchase.

**I** - Purchases of items from DIR Contracts. See Texas Government Code § [2157](#) - Purchase of Automated Information Systems commodities or services.

**K** - Purchases of publications directly from the publisher with no dollar limits. See 34 Texas

Administrative Code § [20.41](#) (e) (5) Delegated Purchases; Publications. Required documentation  
- The purchase order or requisition file must contain the following signed declaration:

**"Direct Publication - Not available from any other source."**

No proprietary justification or best value statements are required if the signed declaration is listed on the purchase order/requisition.

**Note:** Purchases for Libraries are exempt [[see Section 4.2 Exemptions](#)]. These types of exempt purchases do not need a PCC code.

**L** - Purchases of perishable foods, e.g. fresh fruit, eggs, ice, etc. with no dollar limits. See 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**M** - Purchases of distributor items, e.g. repair parts for a unit of major equipment that is needed immediately, or maintenance contracts for laboratory/medical equipment with no dollar limits. See 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**P** - Purchases of petroleum products, e.g. fuels, oils, and greases - (class 405) with no dollar limits. See 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**Q** - Purchases of services in the amounts estimated to be \$5,000.01 but less than \$25,000.00 for the total contract within a one year period. See 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**X** - Purchases of items from TXMAS Contracts. See 34 Texas Administrative Code § [20.47](#) - Multiple Award Schedule.

**S** - Purchases of services in an amount estimated to exceed \$25,000.01 for the total contract within a one year period. See 34 Texas Administrative Code § [20.41](#) - Delegated Purchases.

**T** - Emergency purchases of goods and services exceeding \$25,000. An emergency is defined as a situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. See 34 Texas Administrative Code §§ [20.32](#) and [20.41](#)(a) (2) - Emergency Purchases.

**J, N, O, R, U, V, W, Y, Z** - Not Used.

For purchases of goods and services exempt from competitive bidding or from the purchasing authority of TPASS by a specific statute leave the PCC field blank; the agency requisition number/order number and PCC are not required. The legal cite must be referenced on the purchase documentation for these purchases. Items purchased from TPASS TxSmartBuy term and Managed and open market are not exempt. See Section 4.2 Exemptions for a list of exemptions.



## **Section Three**

### **Procurement Review**



## Section 3.0

### General Audit Procedures

Texas Government Code § 2155.325 and 34 Texas Administrative Code § 20.48, authorize TPASS to perform audits on documents submitted into the Uniform Statewide Accounting System (USAS).

Basic procedures that apply to auditing all types of delegated and non-delegated payment processes are described in the following sections. [See Section 2.47 Purchase Category Codes](#) (PCC) of the Procurement Manual for a list of the Purchase Category Codes (PCC) identifying these payments.

#### **Determining the Procurement and Payment Procedure Applicable to the Purchase.**

1. Determine the estimated dollar amount of the purchase.
2. Establish the commodity class and item number [[see NIGP commodity book](#)]. TPASS uses the National Institute of Governmental Purchasing (NIGP) Commodity Book that numerically classifies supplies, equipment, materials and services based on class and item. The class and item code is required on the Purchase Order.
3. Check purchasing procedures based on commodity class and item, relevant dollar threshold and procurement method.
4. Consult the TDCJ/Texas Correctional Industries (TCI) catalogue [[see Section 2.5 Set-aside Purchases](#)] the Texas Council for Purchasing from People with Disabilities (currently TIBH) catalogue.
5. Consult the State Term Contracts [[see Section 2.6 Term Contracts](#)].
6. If purchase is less than \$5000, use Non-Competitive Purchase procedures (spot purchase).
7. If AIS (Automated Information Systems) Telecom related purchases, see the Procurement Manual, [Section 2.11 Automated Information Systems/Telecommunications Commodities and Services Purchases](#)
8. If DIR exemptions or blanket purchase order procedures apply, follow the procedure under 34 Texas Administrative Code § 20.391.

#### **Competitive Bid Purchases:**

- Purchases between \$5,000 and \$10,000 require informal bids. Obtain three (3) telephone bids from vendors on the CMBL, two (2) of which must be certified HUBs. Additional bids

(CMBL and non-CMBL) may be obtained. [See [Section 2.24 Centralized Masters Bidders List](#).

- Purchases between \$10,000 and \$25,000 require formal bids. Obtain three (3) written bids from vendors on the CMBL, two (2) of which must be certified HUBs. [see Sections 3.0 General Audit Procedures and [2.25 Bid Receipt – Invitation for Bids](#)].
- Purchases of services exceeding \$25,000 require formal bids from all eligible vendors on the CMBL serving your agency's geographic area [see Section 3.0 General Audit procedures and [2.25 Bid Receipt – Invitation for Bids](#)].

There are two types of bid tabulations: informal and formal. The type of bid tabulation used is determined by the procedure used to obtain bids, either informal bids (such as bids taken over the telephone) or formal bids (such as written bids or an Invitation for Bid – IFB). The type of bid procedure is dependent upon the estimated or total dollar amount of the purchase and the class and item

Requirements for an Informal Bid Tabulation (see Section 2.7, Open Market Solicitations)

- CMBL/HUB bidders contacted (vendor's name);
- Name of person contacted and their telephone number;
- TPASS certified HUB ethnicity/gender source statements;
- Bid amounts;
- All responses (include no bids or no responses); and
- Indicate awarded vendor.

Requirements for a Formal Bid Tabulation (see Section 2.7, Open Market Solicitations. **Note:** There should be one of these responses for every vendor on the bidder's mailing list from the CMBL/TPASS certified HUB list.

- When the CMBL mailing list is used, the HUB ethnicity and gender source statements will be indicated. If you are using the CMBL mail label list, you must still indicate the HUB source statements on the bid tabulation;
- All responses need to include dollar amount, no bid, or no response;
- Reason for rejection of any bid; and
- Indicate the awarded vendor and issue a purchase order or notice of award.

## **Section 3.1**

### **Purchase/Procurement Audits**

The complete purchasing package serves as the link from the purchase to the payments transaction in the TPASS files and/or the agency's files. These elements also provide the required audit trail from the agency's internal requirements and encumbrances through the final payment to the contractor and should include the following list of items:

1. Purchase order/requisition issued;
2. Contract number/requisition number;
3. Contractor name, identification (VID or TIN) number and address;
4. Description and specifications of items or services procured,
5. Contract start and end dates (estimated for emergency purchases);
6. Total or estimated contract dollar amount;
7. Signature(s) of authorized purchasing representative(s);
8. Commodity class and item number;
9. Emergency justification letter (if applicable);
10. Proprietary justification letter (if applicable);
11. CMBL bidders mailing list;
12. Historically Underutilized Business (HUB) source statements;
13. Bid tabulation sheet;
14. Formal or informal written bids (where applicable);
15. TPASS Review of Specifications for service contracts exceeding \$100,000 per year (when TPASS has delegated the purchase back to the agency);
16. Good Faith Effort (GFE) for contracts exceeding \$100,000 per year;
17. Purchase Category Code (PCC);
18. Verification of Texas Market Place posting;
19. Vendor's Invoice;
20. Documentation of receipt of goods and/or services

For Lease payments, the following items are verified: the vendor name and identification number, the payment amount (including any CPI increases), the payment period, and the lease number. The lessor's name should match the name entered in the TPASS leasing system.

## **Section 3.2**

### **Post-Payment Audit**

The Expenditure Audit section plans audits on an annual basis and performs a risk assessment each year before initiating audit plans. State agencies are audited for compliance with certain

state laws and rules concerning payroll, travel, purchase and procurement and with the processing requirements of the uniform statewide accounting system (USAS) and the uniform statewide payroll/personnel system (USPS) or the standardized payroll/personnel reporting system (SPRS). The Expenditure Audit sections shall utilize generally recognized sampling procedures to select a sample of transactions to be tested. The agency will supply the complete purchasing package applicable to each Purchase Category Code (see Post – Procurement Agency Document Checklist). Items determined to be exempt from competitive bidding must include the legal citation exempting the purchase (see Section 4.2 Exemptions). Documents are audited for compliance with purchasing procedures to ensure continued delegation to state agencies. Each PCC is audited for the following list of items:

1. The invoice matches the Purchase Order/Contract;
2. Documentation of receipt of the goods and/or services that matched the invoice and PO/contract.
3. Informal bid taken with minimum 2 bids from HUBs (one from minority owned business and one from a woman-owned business, any ethnicity);
4. The bidder mailing list is taken from the Centralized Master Bidders List (CMBL);
5. Source statements from the Historically Underutilized Businesses (HUB) list;
6. Formal written bids;
7. Bid tabulation (informal or formal);
8. Family Code statements or Bidder Affirmations;
9. Verifying that the vendor identification number (VIN/TIN), name and address is the same on all documentation;
10. Verifying payment VIN/TIN against the awarded contract VIN/TIN;
11. Commodity class and item number are listed on purchase order;
12. The correct PCC is used;
13. The correct legal citation on exempt purchases (consult your legal counsel for more information);
14. Verification of authorized signatures on proprietary justification letters;
15. Signed emergency purchase justification letters;
16. Authorized purchasing signatures;
17. Direct publication declaration statement on the purchase order;
18. Purchase Order Change Notice (POCN) for extending/renewing a contract;
19. Verification that sales tax has not been paid by the agency on purchases;
20. Contracts crossing the biennium contain special funding/excess obligation clauses;
21. The supporting cash register receipt for applicable point of sale purchases using the payment card or other authorized credit card. Payment cards purchases that are not point of sale purchase must meet the same documentation requirements as all other purchases;
22. EPLS (Excluded Parties List System) printout before contract award and contract renewal;
23. Verification of Electronic State Business Daily (ESBD) posting.

For additional information call TPASS Expenditure Audit at (512) 463-4894 or fax to (512) 475-5476.

## **AUDIT PROCEDURES AND GUIDELINES**

This section provides procedural guidelines to be followed during the post-payment audit process. The amount of audit planning, the quality of the audit and the work papers, as well as the quality of the report and follow-up activity are important factors. The procedural steps below are general audit steps followed during the post-payment audit process. Differences in agencies must be carefully and judiciously weighed in terms of significance, risks, and the resulting impact upon the agency.

### **Audit Period**

The audit period is the time frame from which the sample transactions will be selected. The audit period for post-payment audits is the most recently completed four fiscal quarters from the date the audit is assigned. For example, an audit that begins on March 1, 2011, should encompass the audit period beginning March 1, 2010 through February 28, 2011.

### **Initial Assessment**

The purpose of the initial assessment is to get enough general information to form a conclusion as to what specific areas of the agency to review. Much of this information can be obtained in advance of the entrance conference. A notice of intent to audit, an agency questionnaire and an audit overview are to be mailed to the agency. After receipt of the questionnaire, the auditor shall schedule the entrance interview and an on-site visit to gain an understanding of the flow of documents through the agency's processing procedures and discuss issues with agency personnel that may affect the nature of the audit.

### **Sampling**

Based on the information obtained during research and planning, the lead auditor will begin preparation for the sampling phase of the audit. The audit team shall utilize generally recognized sampling procedures to select a sample of transactions to test. The audit team shall audit the selected transactions following established policies and procedures. In addition, the auditor shall utilize separate reports generated as part of audit research to verify that payments are valid and processed correctly.

### **Fieldwork**

The primary objective of the fieldwork phase of the engagement is to audit expenditures of the agency for compliance with the rules and regulations governing procurement and its corresponding expenditure to identify any payment or documentation errors. The secondary objective is to audit for compliance with USAS, USPS, and SPRS processing requirements, coding errors and other errors that do not result in an overpayment of state funds. Exceptions are to be categorized and grouped as to the type of error and potential material effect of the errors on the overall agency.

### *Audit Findings*

Purchasing documentation serves as a link from the purchase to the payment transaction. Proper documentation is essential to meet agency's internal requirements and TPASS's audit requirements. Some of the most common procurement related audit findings include:

- Using incorrect PCC codes
- Not posting, or posting incorrectly, on the Electronic State Business Daily
- Not including bidder affirmations and required clauses as part of an IFB
- Incorrect procedures during informal bidding
- Missing information in bid tabulations
- Not using available contracts (Term, CCG, TCI, TIBH, DIR, TXMAS, etc.) without proper justification
- Missing documentation

### **Exit Conference**

At the conclusion of the fieldwork phase, an exit conference shall be held with the appropriate staff of the entity being audited to discuss findings. A final list of findings should be forwarded to the agency at this time. The auditor should document the results of this meeting in the work papers.

### **Report Writing**

The auditor shall report the audit findings to the audited agency. All findings shall be divided into one of two categories:

1. Those which represent payment or documentation errors which will be included in the formal audit report.
2. All others, such as coding, noncompliance with USAS, etc. which will be included in the informal management letter.

The audit report shall disclose the dollar amount of any payment or documentation errors noted inside or outside the sample. This report shall also include recommendations by the Comptroller.

### **Corrective Action Plan (CAP)**

The final step is a CAP for all the findings from the audit report. The CAP must be completed by the agency and returned within 30 days of the report being issued. The CAP outlines steps that should be taken to prevent the same errors from recurring.

## **TEXAS COMPTROLLER OF PUBLIC ACCOUNTS POST-PAYMENT & PROCUREMENT REVIEW AGENCY DOCUMENT CHECKLIST**

### ***PLEASE NOTE:***

- Supporting documentation must be provided for each PCC code, included the blank PCC used for exempt purchases. .



- All purchases exceeding \$25,000 must be posted on the Electronic State Business Daily (ESBD) for the required minimum time period. Failure to post for the required time will void the contract. Verification of the posting is required in the purchase package.

<p><b>PCC A</b></p> <p><b>TERM CONTRACT PURCHASE</b></p>	<p>_____ TxSmartBuy Term Contract PO with authorized signature</p> <p>_____ Invoice must match PO</p> <p>_____ Check freight charges stated on PO</p> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Vendor Performance Report issued for orders \$25,000 or greater</p>
<p><b>PCC B</b></p> <p><b>SCHEDULED PURCHASE</b></p>	<p>_____ Scheduled Contract award listing issued by TPASS</p> <p>_____ Internal Agency Purchase Order with authorized signature</p> <p>_____ Invoice must match PO</p> <p>_____ Check freight charges stated on PO</p>
<p><b>PCC C</b></p> <p><b>MANAGED TERM CONTRACT PURCHASE</b></p>	<p>_____ Internal Agency Purchase Order with authorized signature issued against TPASS Managed Term Contract</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p>

<p><b>PCC D</b></p> <p><b>PURCHASES OF INFORMATION TECHNOLOGY COMMODITIES OR SERVICES NOT AVAILABLE THROUGH DIR CONTRACTS</b></p>	<p><i>If using the new 34 Texas Administrative Code § 20.391 Rule for Request for Proposals procedures:</i></p> <p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Agencies required to determine whether the IT commodity or service is available from Department of Information Resources contract(s); if not, a</p> <p>_____ DIR exemption must be included in the documentation indicating that the product or service may be otherwise procured; an exemption provided by the department of the Legislative Budget Board; or other exemption such as an express statutory exemption may be accepted.</p> <p>_____ If the purchase does not exceed the \$5,000 spot purchase limit, informal bidding requirements must be indicated in the documentation</p> <p>_____ If greater than \$5,000, but less than ceiling for commodity/service, Bid Tabulation is required</p> <ul style="list-style-type: none"> <li>• CMBL printout verifying that at least three (3) vendors were solicited, two (2) of which must be certified HUBs</li> <li>• CMBL printout must reflect date solicited</li> </ul> <p>_____ At the time of award, file documentation must contain:</p> <ul style="list-style-type: none"> <li>• Excluded Parties List System (EPLS) printout date prior to contract award</li> <li>• Awarded vendor's CMBL profile</li> <li>• Awarded vendor's product/service information pertaining to the award</li> </ul> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary letter with authorized signature (if applicable)</p> <p>_____ For purchases over \$100,000, Historically Underutilized Business Subcontracting Plan must be documented</p> <p><i>If using an approved alternate method of procurement per 34 Texas Administrative Code §20.391, code as PCC D, but follow relevant procurement procedures; e.g., the IFB procedure for IT commodities between \$5,000 and \$25,000 would be coded PCC D, but following the PCC F pattern.</i></p>
<p><b>PCC D</b></p> <p><b>(continued)</b></p>	

<p><b>PCC E</b></p> <p><b>PURCHASES LESS THAN \$5,000.01</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Waiver form from TCI if purchased from another source</p> <p>_____ If the item is on term contract, verify that the amount is within the minimum purchase amount designated or within the spot purchase limit per the contract</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Letter of Justification for purchases of non-recycled commodities/services over \$150 (if applicable)</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC F</b></p> <p><b>COMMODITY PURCHASE FROM \$5,000.01 to \$25,000</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Bid Tabulation</p> <ul style="list-style-type: none"> <li>• CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>• CMBL printout must reflect the date solicited</li> <li>• Bid tabulation must list all vendors solicited</li> <li>• Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary letter with authorized signature (if applicable)</p> <p>_____ Letter of Justification for purchases of non-recycled commodities/services over \$150 (if applicable)</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC G</b></p> <p><b>OPEN MARKET ONE-TIME PURCHASE (solicited by TPASS)</b></p>	<p>_____ Open Market Contract issued by TPASS for commodities exceeding \$25,000 and services exceeding \$100,000</p> <p>_____ Internal Agency Purchase Order with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> </ul> <p>_____ Invoice must match TPASS PO</p> <p>_____ Check freight charge on PO (if applicable)</p>

<b>PCC H</b>  <b>CREDIT CARD PURCHASE</b>	<p>_____ PO with authorized signature and/or Internal Log</p> <ul style="list-style-type: none"> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ List on the PO the item purchased</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ All sales receipts or invoices must be included and signed by authorized user</p> <p>_____ EPLS printout, prior to contract award</p> <p><i>Note: Procurement card cannot be used for automated nor non-automated contracts.</i></p>
<b>PCC I</b>  <b>PURCHASES FROM DIR CONTRACT FOR AGENCIES</b>	<p><i>As of 9-1-2007 this Purchase Category Code includes TXMAS Schedule 70 contracts</i></p> <p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ State DIR contract number on PO</p> <p>_____ Invoice must match PO</p>
<b>PCC K</b>  <b>DIRECT PUBLICATION PURCHASE</b>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ Signed declaration statement, "Not available from any other source" must be documented on all direct publication orders</p> <p>_____ EPLS printout, prior to contract award</p>

<b>PCC L</b>  <b>PERISHABLE</b> <b>PURCHASE</b>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Bid Tabulation (\$5,000.01 and greater)</p> <ul style="list-style-type: none"> <li>• CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>• CMBL printout must reflect the date solicited</li> <li>• Bid tabulation must list all vendors solicited</li> <li>• Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p>
<b>PCC M</b>  <b>DISTRIBUTOR</b> <b>PURCHASE</b>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Bid Tabulation (\$5,000.01 and greater)</p> <ul style="list-style-type: none"> <li>• CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>• CMBL printout must reflect the date solicited</li> <li>• Bid tabulation must list all vendors solicited</li> <li>• Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p>

<b>PCC P</b>  <b>BULK FUEL PURCHASE</b>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Bid Tabulation (\$5,000.01 and greater)</p> <ul style="list-style-type: none"> <li>• CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>• CMBL printout must reflect the date solicited</li> <li>• Bid tabulation must list all vendors solicited</li> <li>• Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ All sales receipts or invoices must be included and signed by authorized user</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p> <p>(<i>Note:</i> Purchases made from a CCG Contract should be coded as a Document Type 9 and reference Texas Government Code § 2162.105.)</p>
<b>PCC Q</b>  <b>SERVICE PURCHASE FROM \$5,000.01 TO \$25,000</b>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Bid Tabulation</p> <ul style="list-style-type: none"> <li>• CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>• CMBL printout must reflect the date solicited</li> <li>• Bid tabulation must list all vendors solicited</li> <li>• Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Internal repair statement must be documented on PO (labor charges and parts must be included)</p> <p>_____ TPASS Approval letter to utilize RFP procurement method</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ EPLS printout, prior to contract award</p>

<p><b>PCC S</b></p> <p><b>SERVICE PURCHASE TO EXCEED \$25,000.01</b></p> <p><b>(Total Value of Initial Contract Term)</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Signed bid from awarded vendor</p> <p>_____ Bid Tabulation</p> <ul style="list-style-type: none"> <li>• CMBL printout of all eligible vendors solicited, two (2) of which must be certified HUB vendors</li> <li>• CMBL printout must reflect the date solicited</li> <li>• Bid tabulation must list all vendors solicited</li> <li>• Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ Purchases over \$100,000</p> <ul style="list-style-type: none"> <li>▪ TPASS's Delegation of Purchase letter (<b>required</b>)</li> <li>▪ Written statement addressing rationale for not incorporating the mandatory and/or recommended revisions to the formal solicitation made by the Contract Advisory Team Review and Delegation (CATRAD)</li> <li>▪ HUB Subcontracting Plan (HSP)</li> </ul> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Internal repair statement must be documented on PO (labor charges and parts must be included)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC T</b></p> <p><b>EMERGENCY PURCHASES OF GOODS AND SERVICES EXCEEDING \$25,000 (continued)</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Projected beginning and end date of contract</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Signed bid from awarded vendor</p> <p>_____ Emergency justification letter with authorized signature</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ Required statements for an emergency purchase</p> <ul style="list-style-type: none"> <li>• Nature of emergency and cause</li> <li>• Estimated impact or damage either financial or otherwise that will occur by following normal procurement practices (general statements of loss or normal damage are not acceptable)</li> </ul> <p>_____ EPLS printout, prior to contract award</p>

<p><b>PCC X</b></p> <p><b>TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)</b></p>	<p><i>As of 9-1-2007 PCC X does not include TXMAS Schedule 70 contracts</i></p> <p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• Delivery terms and/or contract term defined</li> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ State TXMAS contract number on PO</p> <p>_____ PO forwarded to TPASS or entered into TPASS's automated system</p> <p>_____ Proprietary letter with authorized signature (if applicable)</p> <p>_____ Best value statement must be documented on the PO (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) award posting printout if purchase is over \$25,000</p>
<p><b>EXEMPT PURCHASES</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>• NIGP Class-Item Codes listed</li> </ul> <p>_____ Legal cite applicable to the purchase must be listed on the purchase documentation (<b>required</b>)</p> <ul style="list-style-type: none"> <li>▪ Example: TGC, Section 2162.105</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p> <p><i>NOTE: Utility payments made using a payment instrument OTHER THAN a purchase order need not contain a purchase order number.</i></p>
<p><b>NOT ADDRESSED BY PCC CODE</b></p>	<p>_____ <b>State Use Report</b></p> <p>The State Use Report is a legislatively mandated report submitted by the 15th of each month listing purchases made as an exception to Human Resource Code 122.014 regarding specifications of products and services for sale to state agencies by TIBH.</p> <p>_____ <b>Procurement Plan (Due by November 30<sup>th</sup>)</b></p> <p>An agency must submit an entire Procurement Plan for each fiscal year. Updates must be submitted as necessary. If there are no updates to the plan in a fiscal year, a letter must be sent to indicate there are "no changes". Procurement Plan submittals or "no change" letters are due by November 30<sup>th</sup> of each year.</p> <p>_____ <b>Contract Advisory Team Review and Delegation (CATRAD)</b> Major contract solicitations of \$1 million or greater in value must be submitted to CAT through the CATRAD System.</p>



# **Section Four**

## **Miscellaneous**

## **Section 4.0**

### **Recycled, Remanufactured and Environmentally Sensitive Products**

Expenditures for Recycled Material (Due January 1st)

Per Texas Government Code § 2155.448 each state fiscal year TPASS may identify recycled, remanufactured, or environmentally sensitive commodities or services and designate purchasing goals for the procurement of those commodities and services by state agencies for that fiscal year.

The law also requires agencies to provide information about purchases of recycled products. The TPASS electronically posts agencies' purchasing history of recycled, remanufactured, and environmentally sensitive products at <http://www.window.state.tx.us/supportserv/prog/green/>. This report includes only those purchases made through TPASS TxSmartBuy term contracts

Not later than January 1st of each year, a state agency or institution shall enter its report of the total expenditures for purchases of goods that have recycled material content, that are remanufactured or environmentally sensitive and the amount spent in each category for the previous fiscal year.

## **Section 4.1**

### **Forms**

See [Procurement Forms Library](#).

## Section 4.2

### Exemptions Document Type 9

The purchase of certain commodities and services may be exempt by statute from TPASS purchasing authority, may be exempt from competitive bidding or may be required by statute to be procured through another specific purchasing method. Purchases of goods or services exempt from competitive bidding must have the specific legal cite allowing the exemption printed on the purchase order documentation. If there is no statutory authority to support the exemption, then the following procedure must be used:

- Agencies must attempt to bid these goods or services competitively when the bid threshold (currently \$5,000) is exceeded;
- If the estimated purchase amount exceeds \$5,000 and the agency cannot solicit competitive bids for these goods or services, then the requisition and purchase order should be qualified as a proprietary procurement and a proprietary justification letter must be attached to the order. If not a proprietary purchase, then you must attempt to competitively bid the purchase.

NOTE: Document Type 9 exempt purchases are subject to Post-Payment Procurement Review

<u>Item or Nature of Service</u>	<u>Texas Government Code Section</u>
<b>Auxiliary enterprises</b>	<b>2155.141</b>
<b>Goods or services made or provided by blind or visually impaired persons and offered for sale to state agencies</b>	<b>2155.138</b>
<b>Care/Treatment/Education services for wards and clients of the state by Texas Youth Commission</b>	<b>2155.143</b>
<b>Construction projects by or under the supervision of any public authorities created by the laws of this state; or state-aided local government projects of any character whatsoever</b>	<b>2166.004</b>
<b>Construction projects undertaken by Texas Department of Criminal Justice</b>	<b>2166.003(b)</b>
<b>Consulting services or services of a Private Consultant as defined in Texas Government Code, 2254.021 et seq.</b>	<b>2155.001</b>

<b>Council on Competitive Government contracts (Voyager, Grumman, Lone Star, Fuel Man, National Presort, etc.)</b>	<b>2162.105</b>
<b>Group purchasing program: Purchases by state owned hospital or clinics through a group purchasing program comprised of two or more hospital or clinic facilities</b>	<b>2155.139(b)</b>
<b>Health care purchases</b>	<b>2155.144</b>
<b>Health &amp; Human Service agency purchases</b>	<b>2155.144</b>
<b>Items required by statute to be purchased from a particular source</b>	<b>2155.132(f)(2)</b>
<b>Lease payments for district office space for certain agencies and programs</b>	<b>2167.002</b>
<b>Legislative agency purchases for the following agencies: 101, 102, 103, 104, 105, 116, 308 and 362</b>	<b>2155.203</b>
<b>Library materials &amp; services within a university or institutions of higher learning, state-owned hospitals, or clinics (including Amigos Library services) for certain limited purchases</b>	<b>2155.139(a)</b>
<b>Organized activities relating to instructional departments of institutions of higher learning &amp; similar activities of other state agencies</b>	<b>2155.141</b>
<b>Texas Department of Criminal Justice made goods</b>	<b>2155.065</b>
<b>Professional services &amp; fees: services listed in Texas Government Code, 2254.001 et seq.</b>	<b>2155.001</b>
<b>Purchases made from gifts or grants, including industrial grants or contracts in support of research or federal grants or contracts in support of research in aid payments (HEAF)</b>	<b>2155.140</b>
<b>Purchases of products &amp; services of workshops, organizations, or corporations whose primary purpose is training &amp; employing mentally retarded or physically handicapped persons (TIBH set-aside contracts)</b>	<b>2155.441</b>
<b>Repairs &amp; renovations to buildings excluded by TPASS: letter of exclusion from TFC's Facility Construction and Space Management Division should be attached</b>	<b>2166.003(a)(7)</b>
<b>Repairs &amp; renovations to buildings &amp; projects by agencies listed</b>	<b>2166.003 2166.004</b>
<b>Residential space for Mental Health and Mental</b>	<b>2167.001(b)(2)</b>

<b>Retardation &amp; Texas Youth Commission</b>	<b>2167.001(b)(3)</b>
<b>Services of an employee of a state agency</b>	<b>2155.001</b>
<b>Utilities (services of public utilities): natural gas, electric, water, sewage &amp; garbage services, other services &amp; charges for utility services, and local telephone service</b>	<b>2155.001</b>
<b>Vehicle maintenance &amp; repair: any contract for repair of vehicles made by the Inter-Agency Services Division of TPASS.</b>	<b>2171.102(c)</b>
<b>Veterans' Land Board purchases in connection with improvements, repairs, or maintenance of land or other activities undertaken by Veterans' Land Board with respect to land</b>	<b>2155.149</b>

**Note:** If not exempt by statute, the General Appropriations Act or Texas Government Code §2151 et seq., the purchase must be competitively bid or the purchase order should be qualified as a proprietary procurement and a proprietary justification letter should be attached to the order. Please consult your agency's legal counsel for further exemptions applicable to your agency.

## **Section 4.3**

### **Glossary of Purchasing Terms**

#### **Assignments**

The legal transfer of a right or property.

#### **Award**

The act of accepting a bid, thereby forming a contract between the state and a bidder.

#### **Automated Term Contract**

A contract by which orders can be processed by the TPASS computer system when the agency provides the required coded information on the Contract Purchase Requisition. Eliminates the need for the agency to describe items on the requisition.

#### **Best Interests of the State**

Most advantageous to the state in light of all relevant circumstances.

#### **Bid**

An offer to contract with the state submitted in response to a bid invitation issued by the TPASS or an issuing entity.

#### **Bid Deposit**

A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas; a surety or blanket bond from a company chartered or authorized to do business in Texas and United States Treasury listed; a United States Treasury Bond; or certificate of deposit.

#### **Bid Sample**

A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

#### **Biennial Period**

Occurring every two years.

#### **Biennium (State of Texas)**

A period of 24 consecutive months, beginning on September 1 of each odd numbered year. Example: September 1, 2011 through August 31, 2013

#### **Blanket Bond**

A performance bond which insures a respondent's performance on two or more contracts in lieu of separate bonds for each contract. The amount for a blanket bond shall be established by the TPASS and contracting entities based on the respondent's annual level of participation in the

state purchasing program. Acceptable forms of blanket bonds are those described in the definition of bid deposit.

**Blanket Order**

A purchase order with a vendor for a specified time period, specific commodity, and an estimated quantity to be delivered as requested. Use of minimum call out quantities is advised for this type of order.

**Brand Name**

A trade name or product name which identifies a product as having been made by a particular manufacturer.

**Centralized Master Bidders List (CMBL)**

A database maintained by TPASS containing the names and addresses of registered vendors which have provided contact information and information on goods or services they offer.

**Certification**

State agency personnel completing the required training and continuing education will have certified purchasing authority to approve purchase orders on behalf of the state of Texas and their prospective agency.

**Class and Item**

The classification system found in the NIGP Commodity Book that identifies items and services.

**Commodity**

Supplies, materials or equipment listed for NIGP commodity class and item numbers

**Commodity Book**

List of NIGP class and items numbers maintained on the TPASS Web site

**Competitive Solicitation**

The process of inviting and obtaining responses from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best respondent meeting the specifications. The process contemplates giving potential vendors a reasonable opportunity to bid, and requires that all vendors be placed on the same plane. Each respondent must propose on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of a competitive solicitation is to stimulate competition, prevent favoritism, and secure the best goods and services at the best value, for the benefit of the state. Solicitations cannot occur where contract specifications, terms, or conditions prevent or unduly restrict competition, favor a particular vendor, or increase the cost of goods or services without providing a corresponding benefit to the state.

**Competitive Specifications**

A specification stated in such a manner that two or more vendors can meet the specifications on the same plane of equality.



**Confirmation Order**

A purchase order issued to a vendor, listing the commodities and terms of an order placed verbally, or otherwise, in advance of the issuance of the purchase order.

**Consumable Procurement Budget**

That portion of an agency's budget as identified by TPASS expenditure codes attributable to consumable supplies, materials, and equipment.

**Cooperative Purchasing**

A program for qualified entities to use the TPASS contract resources.

**Delegated Purchase**

A purchase made by an agency under the authority of the TPASS and subject to TPASS rules and procedures.

**Design Specifications**

A specification describing the essential physical characteristics which an proposed item must possess to be considered for award and so detailed as to describe how the product is to be manufactured.

**Director**

The director of the TPASS's Procurement Division.

**Direct Publication**

Purchases of publications directly from the publisher and considered sole source.

**Discount-From-List**

Requires insertion of net unit prices on the solicitation for commodities. The respondent must submit a printed manufacturer's price list or catalog from which prices are to be figured. Prices in this category cannot be increased for ninety (90) days after the contract begins, unless otherwise noted in the solicitation.

**Distributor Purchase**

The purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment.

**Early Payment Discount**

A discount from the purchase price allowed to the agency if payment is made within a specified period. **Electronic Data Interchange (EDI)**

Exchange of information electronically between business parties in a structured format, including but not limited to computer direct or indirect electronic information exchange, exchange of computer tapes and disks, and facsimile transmission.

**Electronic State Business Daily (ESBD)**

State agencies making procurements exceeding \$25,000 without regard to source of funds will post the solicitation through the ESBD.

**Emergency Purchase**

A purchase of goods or services so critical that an agency will suffer financial or operational damage unless they are secured immediately.

**Environmentally Sensitive Products**

Products or services, also called “eco-friendly”, that are not harmful to the atmosphere or surroundings.

**Equivalent Product**

A product that is comparable in performance and quality to the specified product.

**Escalation Clause**

A clause in a contract providing for a price increase under certain specified circumstances.

**Free on Board (F.O.B.)**

This term refers to the point at which the title to goods transfers between supplier and purchaser at the FOB point and does not relate to the actual freight charges.

**Fiscal Year (State of Texas)**

A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year.

**Fixed Price Contract**

A contract which provides for a firm price which cannot be increased for the full term of the contract and any subsequent renewal periods.

**Formal Proposal**

A written response submitted in a sealed envelope in accordance with a prescribed format transmitted to the TPASS in accordance with procedures established by the TPASS.

**Historically Underutilized Business (HUB):** a business that:

- is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman,
- is a for-profit entity that has not exceeded the size standards prescribed by [34 TAC §20.23](#), and has its principal place of business in Texas, and
- has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.

**Interagency Contract (IAC)**

Understanding between two or more agencies as authorized by Chapter 771 of the Texas Government Code.

**Informal Solicitation**

An unsealed, competitive solicitation used for purchases less than \$10,000 submitted by letter, telephone, telegram, or other means.

**Inspection**

Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition and to verify that it conforms to the applicable specifications.

**Inspection Report**

A report made as a result of the agency's inspection, informing the purchasing authority of a product's compliance with advertised specifications.

**Internal Repairs**

Repairs in which the extent and cost cannot be determined until the commodity is disassembled and evaluated. By definition an internal repair must contain labor but may also include parts.

**Invitation for Bids (IFB)**

A written request for submission of a proposal response

**Late Proposal Response**

A response that is received after the time set for response due date and at the place designated in the solicitation.

**Lease of Equipment**

A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the contractor.

**Lease Purchase**

An installment sale which gives the lessee the right to purchase the equipment at an agreed upon price under certain conditions. Title passes from seller to agency if and at the time the option to purchase is exercised.

**Life-Cycle Costing**

A procurement technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

**Local Government**

A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state.

**Manufacturer's Price List**

A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a particular solicitation.

**Minor Technicality**

A requirement in a solicitation which, if waived or modified by the agency when evaluating responses, would not give a respondent an unfair advantage over other respondents or result in a material change in the contract.

**Multiple Award Contract Procedure**

A purchasing procedure by which the agency establishes one or more levels of quality and performance and makes more than one award at each level.

**Managed Contract**

A term contract that cannot be processed through the TPASS's automated purchasing system. The purchase order is prepared by the agency, referencing the contract number and pricing and mailed directly to the Contractor

**Non Resident Bidder**

A bidder whose principal place of business is not in Texas, but does not include a bidder whose majority owner or parent company has its principal place of business in Texas.

**Notice of Award**

A letter signed by the director or his designee which awards and creates a contract and may be used in lieu of issuing a purchase order.

**OEM**

Original equipment manufacturer.

**Offer**

A proposal by one party to another which is intended to create legal relations on acceptance by the party.

**Open Market Purchase**

A purchase of goods, usually of a specified quantity, processed by TPASS on behalf of a state agency in response to an open market requisition.

**Agency**

A state agency or local government that requisitions goods or services through the TPASS.

**Payment Bond**

A deposit, pledge, or contract of guaranty supplied by a contractor to protect the state against loss due to the contractor's failure to pay material suppliers and subcontractors. Acceptable forms of payment bonds are: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas; a surety or blanket bond from a company chartered or authorized to do business in Texas; United States Treasury bond; or certificate of deposit.

**Payment Card**

State term contract credit card program designed as a payment method to streamline small dollar purchases.

**Performance Bond**

A deposit, pledge, or contract of guaranty supplied by a contractor to protect the state against

loss due to the contractor's inability to complete the contract as agreed. Acceptable forms of performance bonds are those listed in the definition of payment bond.

**Performance Specification**

A specification setting out performance requirements determined to be necessary for the item involved to perform and last as required.

**Perishable Goods**

Goods that are subject to spoilage within a relatively short time and that may be purchased by agencies under delegated authority.

**Post-Consumer Materials**

Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

**Pre-Consumer Materials**

Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

**Principal Place of Business in Texas**

A permanent business office located in Texas from which a bid is submitted and from which day-to-day business activities are conducted, where at least one employee works for the business entity submitting bids.

**Proposal**

A response by one party to another which is intended to create legal relations on acceptance by the party.

**Proprietary**

Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

**Protest Procedures**

Procedures for resolving vendor protests relating to purchasing issues.

**Public Bid Opening**

The opening of bids at the time and place advertised in the solicitation, in the presence of anyone who wishes to attend. On request of any person in attendance, bids will be read aloud.

**Purchase Orders**

A document issued by a purchaser to a seller, indicating types, quantities, and agreed prices for products or services the seller will provide to the agency. Sending a purchase order to a supplier constitutes a legal offer to buy products or services. Acceptance of a purchase order by a seller usually forms a one-off contract between the buyer and seller, so no contract exists until the purchase order is accepted

### **Purchasing Functions**

The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, response evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administrative functions.

### **Recycled Material Content**

The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

### **Recycled Materials**

Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

### **Recycled Product**

A product that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality in consultation with the Comptroller of Public Accounts.

### **Remanufactured Product**

A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturers (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

### **Rent**

Payment for the use of property.

### **Request for Information (RFI)**

A document to determine what products and services are potentially available in the marketplace to meet the agency's needs and to know the capability of a vendor in terms of offerings and strengths. RFIs are commonly used on major procurements, where a requirement could potentially be met through several alternate means. An RFI, however, is not a request for pricing, is not binding on either the agency or vendors, and may or may not lead to an RFP or RFO.

### **Request for Offer (RFO)**

To be used in the Purchase of Automated Information System (AIS) or Telecommunication procurements.

**Request for Proposal (RFP)**

The written solicitation document concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure. The procedure allows changes to be made after other proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

**Request for Qualifications (RFQ)**

A solicitation document often distributed before initiation of the RFP process. It is used to gather vendor information from multiple companies to generate a pool of prospects. This eases the RFP review process by preemptively short-listing candidates which meet the desired qualifications.

**Requisition**

An internal document by which agency personnel provide their written requests for commodities or services to the budget and purchasing departments.

**Response Tabulation**

The recording of responses for purposes of Documents all received for evaluation and recording purposes.

**Respondent**

An individual or entity that submits a proposal. The term includes anyone acting on behalf of the individual or other entity that submits a proposal, such as agents, employees, and representatives.

**Respondent Affirmation Clauses**

Respondent affirms by signature on the solicitation document(s) compliance with the affirmations required by Texas Government Code.

**Salvage Value**

The estimated value of a property when the user completes its use of the property.

**Sealed Bids and Proposals**

A response which is kept secure and unopened until after the due date and time specified.

**Service**

The furnishing of skilled or unskilled labor or professional work but does not include professional services covered by the Professional & Consulting Services Act (defined in Chapter 2254 of the Texas Government Code), or an employee of an agency, and services of public utilities.

**Set-Aside Contract**

Term often used when referring to TIBH and Texas Correctional Industries (TCI) statutory purchasing programs.

**Solicitation**

Documentation prepared and presented to vendors for response for specification commodities or services such as Invitation for Bid, Request for Proposal or Request for Offer.

**Specification**

A **specification** (often abbreviated **spec**) is an explicit set of requirements to be satisfied by a material, product, or service. Should a material, product or service fail to meet one or more of the applicable specifications, it may be referred to as being *out of specification*. Specs are a type of technical standard.

**Standard**

The established and fixed measure used in assessing quality or performance.

**Standing Order**

Similar to a blanket order except it has specified quantities and specified delivery dates.

**Surplus**

Federal and State surplus property programs administered by the TFC. Each program has its own laws, rules, and procedures.

**Terms & Conditions**

The provision specifying the nature of a contract.

**Term Contract Purchase**

A purchase by an agency under a term contract which establishes a source of supply for particular goods at a given price for a specified period of time. TxSmartBuy Term Contract and TPASS Managed.

**Texas Council for Purchasing from People with Disabilities (TCPPD)** An agency of the government of the State of Texas, dedicated to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful, productive employment activities.

**Texas Department of Criminal Justice (TDCJ)** Goods and services may be purchased directly from the Texas correctional Industries (TCI) state agency without competitive bidding per the Texas Prison Made Goods Act, Chapter 497 on the Texas Government Code. The Institutional Division of TDCJ offers a Texas Correctional Industries (TCI) catalogue.

**Texas Resident Bidder**

A bidder with its principal place of business in Texas, including a bidder whose majority owner or parent company has its principal place of business in Texas.

**Texas Specification**

A specification adopted by the TPASS and used whenever possible in the purchase of the item



involved. Established standard of minimum quality for items or services purchased in volume by the state.

**Unit Price**

The price for a good or service in accordance with the unit of measure provided in the solicitation.

**USAS**

Acronym for the Uniform Statewide Accounting System.

**Vendor**

A potential supplier of goods or services to the state.

**Written Data**

Data which is expressly required to be submitted in writing. A solicitation that expressly requires the submission of written data with the response must include the following statement or its substantial equivalent: "Failure to provide the required information with the bid response will automatically disqualify the response from consideration for award in connection with this transaction."

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